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OFFICIAL WEEK IN REVIEW

February 15.—PRESIDENT Garcia deferred his scheduled return to Manila early this morning in order to study and act on several pending nominations awaiting his signature prior to their submission to the Commission on Appointments for confirmation.

Nominations signed this morning were as follows: Milo Bacolod, justice of the peace of Culaba, Leyte; Ronaldo Banzuela, auxiliary justice of the peace of Alaminos, Pangasinan; Benjamin Campomanes, provincial board member of Quezon; Adolfo Alba, auxiliary justice of the peace of Koronadal, Cotabato; Jose O. Moran, justice of the peace of Cabanonan, Mountain Province; Zacarias Y. Garcia, justice of the peace of Bongabong, Oriental Mindoro; Florentino M. Villanueva, assistant city fiscal of Manila; Celso Tuyros, justice of the peace of San Juan, Oriental Negros; Artemio Catipay, justice of the peace of Jones and Concepcion, Romblon; Salvador Layo, assistant provincial fiscal of Lanao; Cenon Moreno, Jr., justice of the peace of Pangutaran, Sulu; and Onofre Albanza, registrar of deeds for Baguio City and the sub-province of Benguet.

At the last minute, President Garcia decided to postpone his departure from Baguio until after lunch to have a few hours more of respite in Baguio.

Mrs. Leonila D. Garcia left Baguio at 7:30 this morning for Damortis where she boarded the presidential train for Manila.

President Garcia received officials of the National Development Company who appraised him of the main problems confronting the Administration's cotton growing project in Cotabato. They told President Garcia their main problem was effective control of plant pests which already had caused several crop failures.

The NDC officials who saw the President were Celestino Cortes, Genaro Sarmiento, Agustin Caseñas, Isabelo Sales, and Leonardo Salazar.

The President heard mass at 9 a.m. Then he stretched his legs by taking a leisurely stroll around the Mansion House grounds with his aides.

He exchanged greetings with several groups of sightseers and later wound up in the *glorieta* behind the Guest House, where he swapped anecdotes and stories with his companions.

Feeling rested and relaxed after his exercises, President Garcia returned to his study room and later signed several nominations for appointments.

President Garcia left Baguio City at 2 p.m. and went straight to his private residence in Quezon City, where he spent a quiet evening working on state papers. He retired early after a taxing five-hour drive from the Pines City.

February 16.—THIS MORNING President Garcia called on the more "fortunately situated citizens" of the nation to support the scholarship program of the University of the Philippines in order that the country might take its rightful place of honor in the family of Asian nations.

The Chief Executive was the guest speaker at the opening ceremonies of the three-day Fourth International Students' Festival at the U. P. College of Liberal Arts building.

Stressing the necessity of achieving "our destiny as a people," the President said the U. P. had meager resources and could not afford by itself to sustain the program.

The President was introduced by UP President Vicente G. Sinco, chairman of the Philippine Board of Scholarships for Southeast Asia. Felixberto C. Sta. Maria, acting executive secretary of the board, delivered the opening remarks.

Twenty-nine countries are participating in the festival, among them, Australia, Austria, Belgium, Great Britain, Ceylon, Chile, China, Denmark, France, Germany, Hongkong, Hungary, India, Indonesia, Italy, Japan, Korea, Monaco, Netherlands, Norway, Pakistan, Philippines, Spain, Sweden, Switzerland, Thailand, United Arab Republic, and Vietnam.

After the program opening the festival, Mrs. Sofia S. Sinco, wife of the UP president, cut a ribbon formally opening the cultural and artistic exhibits at the lobby of the Liberal Arts building. Following a round of the exhibits on display by President Garcia, a reception was held in the right front lawn of the building.

Full military honors were accorded the Chief Executive upon his arrival at the UP campus about 10 a.m., consisting of a 21-gun salute and a review by an honor guard made up of members of the UP ROTC model company.

From the UP, the President motored to the proposed factory site of the ₱500,000 Bamboo Industrial Development Corporation (BINDECO) in Mandaluyong, Rizal.

He was taken on a sight-seeing tour of the compound by Regalado G. Franco president and general manager, and Jose T. Jimenez, chairman of the board of directors of BINDECO.

Also present were officials of the Industrial Development Center headed by Director Faustino Lozada and representatives of the National Economic Council led by Ruben Macaspac, director of national planning.

The President was informed that the 100 per cent Filipino corporation was turning out 20 pieces of experimental bamboo laminated panels a day and that, when it starts producing at maximum capacity, it could produce a minimum of 1,000 panels a day.

President Garcia expressed gratification upon learning that the machinery used in producing bamboo laminated panels were produced locally from designs and specifications made by the BINDECO President Franco, a mechanical engineer.

He was also told that aside from exploiting the overseas markets, the BINDECO plans to enter the local field. Their product, it was claimed, can compete favorably with locally-produced plywood and other handboards.

From the BINDECO factory site in Mandaluyong, the President returned to Malacañang for a late afternoon lunch.

THIS EVENING the President expressed the determination of the Administration to push through with more vigor its industrialization program with the view to achieving self-sufficiency in clothing and shelter.

The President made this statement after pinning at Malacañang the Distinguished Service Regimental Gold Medal of Honor of the Antipolo Veterans Legion to Felicisimo D. Reyta, Filipino inventor of a rice and corn mill.

With self-sufficiency in food already achieved, especially in rice and corn, the Administration would aim to wipe out the yearly importation of textile amounting to about ₱100 million, President Garcia said.

Six years ago, the textile importation of the Philippines amounted to about ₱300 million, which was quite a drain on the dollar reserves of the country, the President pointed out, but since the industrialization program was undertaken, the textile industry has developed in such a manner that the importation of textile, at the end of 1958 dipped to ₱100 million.

He appealed to the farmers to plant cotton and ramie in order to help the unrelenting efforts of the Administration to achieve the goal of self-sufficiency in clothing. He assured them of government support in this direction.

With regard to the third goal of the Administration which is self-sufficiency in shelter, the President underscored the efforts of the Administration

to exploit our iron deposits and establish hydroelectric plants in different parts of the country in order to harness and generate cheap industrial power.

Speaking of the signal contribution of the invention of Reyta to the national economy, President Garcia said that the high recovery of the rice and corn mill represents an additional source of income to the farmers.

He said that the Administration will try to encourage and stimulate the use of the Filipino invention, adding that Reyta is one of the outstanding candidates for the Independence Award for his invention.

February 17.— PRESIDENT Garcia today directed officials of the Land Tenure Administration to bring down the price of the lots being sold to bona fide tenants or occupants of the Nuestra Señora de Guia Estate in Tondo.

The Presidential directive was issued at a conference held in Malacañang with Rep. Augusto Francisco of Manila; Jose Tecson, a lawyer and president of the tenants association *Bagong Araw Na;* and Amadeo Alinea, chief of the LTA finance staff.

The President likewise directed LTA officials that, in bringing down the price of the Guia Estate, they should be guided by the principle of recovering the money spent by the government without any profit.

The Manila solon and the Tondo tenants claimed that the De Guia Estate was bought by the Government in 1947 for approximately ₱3.50 per square meter and is now being sold to tenants at prices ranging from ₱10 to ₱22 per square meter.

The price range, according to Francisco and the tenants, does not include rentals, cost of administration, and other expenses.

In petitioning the President to assist them in their plight, the tenants cited Republic Act No. 409, which provides for the manner of administration of the estate and its subsequent re-sale at cost to occupants.

The President, in the course of a conference with Rep. Laurentino Badilles of Lanao, directed the Budget Commission to release ₱90,000 to be used to combat the rat and locust infestations in Mindanao, especially in Lanao.

Other presidential callers were Ambassador Carlos P. Romulo, who is returning soon to his post in Washington; Sen. Pedro Sabido; William L. Moran, Jr., president of the Pepsi Cola Bottling Company of the Philippines; Reps. Valeriano Yancha of Samar, Wenceslao Lagumbay of Laguna, Fausto Dugenio of Misamis Oriental, Guillermo Sanchez of Agusan, Faustino Tobia and Godofredo Reyes of Ilocos Sur, Luciano Millan of Pangasinan, and Jose B. Legaspi of Aklan.

THE PRESIDENT approved today a proposal sponsored by the business community to use the RPS *Lapu-Lapu* as a floating exposition to display Philippine-made products on a tour of Southeast Asian countries.

The President's approval of the request for the use of the recently-designated flagship of the Philippine Navy was given during a meeting with prominent local businessmen who were accompanied to Malacañang by Commerce Undersecretary Perfecto E. Laguio.

Present at the meeting were Fernando E. V. Sison, president of the Philippine Chamber of Industries; Marcelo S. Balatbat, president of the Chamber of Commerce of the Philippines; Daniel Me. Gomez, president of the National Economic Protectionism Association (NEPA); and Mariano V. del Rosario, Dr. Dalmacio Suaco, Roberto Villanueva, and A. B. Isip.

They informed the President of their plan to organize a floating exposition that would call on neighboring countries in Asia with a view to opening up new markets for locally-produced goods in line with the Administration's economic policy as enunciated in the President's state-of-the-nation message.

Among the goods they intend to put on display in the floating exposition are Philippine handicrafts, cement products, rubber tires, batteries, locally produced drugs and chemicals, plywood, etc.

The exposition will also coincide with the observance of the 25th year of the National Economic Protectionism Association (NEPA).

Through Sison, who acted as spokesman, the group told the President that their proposal had received spontaneous endorsement and support of the business community in the Philippines.

Sison said they planned to make it a goodwill and economic tour as well as cultural by taking with them a small dance group to perfom native dances in the countries they will visit.

To show enthusiastic response to the idea, President Garcia said the exposition will open the eyes of the Southeast Asia to the progress made by the Philippines in the industrial and economic fields. He added that it will contribute to the realization of the ideal of closer economic and cultural cooperation with other Asian nations.

Target date for the departure of the proposed floating exposition from the Philippines has been tentatively set for early April. They will be away for around 30 days.

The RPS *Lapu-Lapu*, still in Japan for final tests and trials, is expected to reach here sometime around the end of March.

The expenses to be incurred will be shouldered by the business community while the government's participation will be the use of the *Lapu-Lapu*.

THIS EVENING the President rallied the members of the Senate behind the Administration's tax measures in a move to salvage these monetary bills which are facing defeat in the lower chamber of Congress.

In a protracted conference with 15 senators at his private residence on Bohol Avenue, Quezon City, the President pointed to the precarious financial condition of the government, which operated on a heavily slashed budget this fiscal year in an effort to stave off a big deficit.

At the same time, the President explained his proposed ₱1.26 billion budget for next fiscal year, which he said is considerably bigger than the present figures for the current year.

Sen. Mariano Jesus Cuenco, bitter critic of the President, was not present although he was invited to the affair.

Senators Claro M. Recto and Lorenzo M. Tañada of the opposition Nationalists-Citizens were also absent. They were likewise invited to the dinner conference.

Sen. Tañada tonight said he could not attend the dinner conference, as he had accepted a previous speaking engagement.

Senators Recto and Cuenco were not available for comment.

Those present were Senate President Eulogio Rodriguez, Sr., Senate Majority Floor Leader Cipriano P. Primicias, and Senators Domocao Alonto, Roseller T. Lim, Pacita Madrigal-Gonzalez, Pedro Sabido, Arturo M. Tolentino, Edmundo Cea, Decoroso Rosales, Oscar Ledesma, Lorenzo Sumulong, Quintin Paredes, Alejo Mabanag, Francisco Rodrigo, and Eulogio Balao.

Press Secretary Jose C. Nable said that the President is also arranging a dinner conference with the House members shortly in an effort to secure unanimous support for his tax measures and proposed budget.

The tax measures which the President explained to the Senate members were those:

1. Requiring tax-exempt industries to pay normal income taxes;
2. Increasing the specifix tax on gasoline by two centavos;
3. Eliminating exemption to the special import tax;
4. Updating rates of berthing, port service fees, and tonnage dues which were fixed in the Administrative Code many years before the war;
5. Granting partial amnesty on past tax delinquencies;
6. Increasing personal income and corporate taxes;
7. Increasing the rates of taxes on firecrackers;
8. Restoration of the 1950 specific tax rates on distilled spirits, wine, and fermented liquor;

9. Improving customs and revenue administration to effect efficient enforcement of customs and revenue laws; and

10. Creating a tax on "wealth" which would implement the existing residence taxes in order to adjust proportionately the taxation on income and property holding of taxpayers.

In seeking Senate support for his tax measures, the President pointed out that the expanded budget requires the revenue expected to be derived from the tax bills he submitted as complementary measures to the budget.

He said he had increased the appropriations to meet the demands of the people for expanded services in the social and economic fields.

The President pointed out that the Department of Education's appropriations had been increased to finance the opening of 129 vocational schools and other classes.

President Garcia said that he had authorized the enrolment of 60 students in every class in the intermediate schools to accommodate an expanding school population every year.

He said that while the Department of Education used ₱165 million in 1953, he has proposed an appropriation of ₱363 million next fiscal year to prevent at school crisis.

At the same time, the President assailed the former Liberal Party administration which he said had tapped the trust funds of the government and utilized some ₱185 million for budgetary requirements.

He explained that out of the ₱1.2 billion indebtedness incurred by the Liberal Party regime, the Nacionalista administration has liquidated about ₱85 million.

The President likewise said that the expanded program of industrialization and agriculture has absorbed a great portion of the unemployed.

He recalled that according to the latest figures released by the National Economic Council, the number of the unemployed has been whittled from 1,200,000 to some 700,000 this year.

The President was also expected to take up with the senators the Philippine position to press for the country's omnibus claims amounting to $900 million with the United States.

Up to press time this evening the President was still sounding out the Senate members on his tax measures and the budget in a move to insure their approval by Congress.

February 18.—PRESIDENT Garcia did not receive callers today except a Manila publisher with whom he conferred on varied subjects.

It was learned the President took up his rejection of the invitation of the National Press Club to attend the annual Gridiron dinner originally scheduled for Sunday.

President Garcia said he has a previous engagement which is his scheduled trip to Lingayen, Pangasinan, where he will open the national interscholastic meet.

The NPC cancelled the scheduled Gridiron dinner leaving in its wake speculative talks on the President's avoidance of unpleasant remarks which usually foul up the atmosphere during this press affair.

IN THE AFTERNOON, the President stayed in his residence on Bohol Avenue, where he went over pending papers including the signing of a proclamation making February 19, a special public holiday in Tarlac, Pampanga, and Quezon provinces.

The President made the day a special holiday in Tarlac and Pampanga in connection with the birth anniversary of former Chief Justice Jose Abad Santos, and in Quezon province, in connection with the 70th birth anniversary of Mrs. Aurora Aragon Quezon, wife of the late President Quezon.

At six o'clock the President convened his Cabinet meeting which lasted until nine o'clock in the evening.

THE CABINET tonight deferred decision on a proposal of the National Economic Council to establish four additional flour mills in the country.

The proposal was presented to the Cabinet by former Senator Jose C. Locsin, NEC chairman, who said the four additional mills would ensure a steady supply of flour for local consumers.

He said that at present there are only two flour mills which could not cope with the consumer's requirements.

Locsin said these two mills are the Republic Flour Mills and the Wellington Flour Mills. The Republic firm has an annual output of 50,000 metric tons while the other factory has a yearly turnout of 40,000.

Locsin said he has received six applications to set up flour mills in the country to complement the two already established.

These are the Progressive Flour Mills, Inc., General Milling Corporation, G. Puyat & Sons, Liberty Mills, Aboitiz & Co., and Universal Corn Products, Inc.

The Republic Flour Mills has also applied to set up another mill for an annual output of 50,000 metric tons. However, the NEC, it was learned, had approved a yearly capacity of 40,000 metric tons.

Locsin, in sponsoring a resolution authorizing the establishment of four other mills, said that government statistics indicate that the annual consumption is 300,000 metric tons.

He said that the Wellington and the Republic mills could only grind 90,000 metric tons which leaves a balance of more than 200,000 metric tons.

Locsin also said the establishment of more mills would boost the cassava industry since the law provides that cassava must be mixed with locally manufactured flour.

Former Secretary Salvador Araneta, owner of the Republic Flour Mills, said he was in favor of authorizing the establishment of two other mills. However, he registered his objections to the grant of Cabinet franchise to four mills.

Araneta said the Republic Flour Mills has been authorized to set up another factory which can turn out a yearly output of 40,000 metric tons.

February 19.—THIS morning President Garcia signified his desire to push through the establishment of a complete blood plasma processing plant here which is included in the annex attached to the reparations agreement between the Philippines and Japan.

The President made the announcement at a conference held in Malacañang with Rep. Pedro Trono of Iloilo; Dr. Ryoichi Naito, medical and managing director of the Blood Plasma Corporation of Japan; Manatobe Kishigami of the same firm; R. Murofushi, general manager of the Marubeni-lide Co., Ltd.; Jose Angeles and Renato Liboro of the Lexal Laboratories.

The President was informed by the Iloilo solon that with the acquisition of a plasma plant, the cost of the life-saving fluid would be brought down to as much as 50 to 70 per cent.

At present, Rep. Trono added, the cheapest plasma costs between ₱38 to ₱40 per 250 cc. Trono also said that the establishment of the plasma plant would go a long way towards promoting the Administration's program for public health and welfare.

The President also received this morning Speaker Daniel Z. Romualdez; Hans Wuttke, export director of the Mercedes Benz Company; and Tony Lee, president of the Universal Motors with whom he discussed the gradual use of local raw materials by the motor assembly plants in the Philippines with the establishment of the nation's integrated steel industry.

Gov. Conrado Estrella of Pangasinan called on the President to make the necessary arrangements for the forthcoming visit of the Chief Executive to his province to open the national interscholastic athletic meet on Sunday and to address the members of the league of provincial governors and city mayors which will be resumed in Pangasinan.

Other presidential callers included Rep. Domitilio Abordo of Iloilo, who accompanied Mayor P. Margarico of Janiuay, and Gov. Felixberto Dagani with a delegation of Agusan mayors.

The President submitted today the following nominations for consideration of the Commission on Appointments: Vicente Cabrera as City Engineer of Cagayan de Oro City; Tropio del Rosario as Justice of the Peace of Morong, Bataan; and Honesto Casimiro as Justice of the Peace of Tiwi, Albay.

President Garcia today heeded the urgent pleas of a mother to save her 10-year old daughter by directing the Philippine National Red Cross officials to provide the child with the much-needed blood transfusions.

In a directive to Red Cross officials, the President ordered that "type A" blood be rushed by plane to Levihilda Songalia, who was reported in critical condition because of leukemia in Tacloban City.

President Garcia's attention to this emergency was called by an item in one of the local metropolitan newspapers.

The report said that the mother of the 10-year old girl made use of the local radio in Tacloban City to sound an appeal for blood transfusions.

PRESIDENT Garcia received the gold medal of the "Head of State" award of the Lions International from Eugenio Eusebio, director of the organization who represented Dudley L. Simms, international president, in a ceremony held this afternoon in the social hall of Malacañang.

The award was presented to the Chief Executive "in recognition and appreciation of the invaluable services and gracious courtesies extended to the organization."

In a speech acknowledging the honor bestowed upon him, the President said he was aware of the many social services being rendered to the people and the country by the Lions.

President Garcia further said that he would again set aside one week in March as Lions' Week as a tribute to the organization and so that the people will know more about it and its good works.

Lions International Director Eusebio was assisted in the presentation by Eulalio F. Legaspi, governor of District 301, and Rene Lacson, international relations officer of the organization.

Rene Lacson read the citation for the award, while Antonio P. Abaya of the Mandaluyong Lions Club acted as master of ceremonies.

Mrs. Garcia and Executive Secretary Juan C. Pajo. were among those who attended the presentation ceremony.

After the ceremony, President Garcia conferred with political leaders of Cagayan with whom he discussed plans for public works projects to accelerate the economic development of the province, among them, the construction of bridges in the towns of Solana, Pamplona, and Abulog and the extension of the Manila Railroad line to Cagayan.

Present at the conference were Sen. Eulogio Balao, Executive Secretary Juan C. Pajo, Reps. Benjamin Ligot and Felipe Garduque, Commissioner Jose P. Carag of the Commission on Elections, and former Rep. Vicente Fernandez.

February 20.—PRESIDENT Garcia announced today that he will give the Central Bank time to act on the protests against the reduction of dollar allocations for the current quarter of all alien importers, except American importers.

The President received at Malacañang British Ambassador George Clutton, who verbally transmitted to him the protest of some members of the local diplomatic corps against the "Filipino First policy" in the grant of dollar allocations. The President also received officials and members of the International Chamber of Commerce who presented a resolution protesting against the policy adopted by the Monetary Board on January 5, 1959.

The Chief Executive told the ICC delegation that he had been giving the matter a serious study and had directed CB authorities to make a further study on the matter. He added that he will consider the ICC resolution as an appeal if the Central Bank sustains the "Filipino First policy."

The ICC officials were Primitivo Lovina, chairman, Philippine national committee; A. J. Balls, president, Manila Chamber of Commerce; Peter C. Richards, MCC; Teofilo D. Reyes, Sr., chairman, CAFEA, ICC; Ramon Lopez, secretary, Spanish Chamber of Commerce; Alfonso de Dampierre, president, Spanish Chamber of Commerce; Sy En, president, Philippine Chinese General Chamber of Commerce; Yan Sepeng, PCGCC; Pierre Deleplanque, president, French Chamber of Commerce; Tupandas Verhumal, president, Indian Chamber of Commerce; Peter Lim and Tang Tack, Federation of the Chinese Chamber of Commerce; Justo N. Lopez, secretary general, PNC–ICC; I. Mckercher, V. Abad Santos, and L. W. Bymolt, ICC.

The British ambassador was accompanied to Malacañang by Foreign Affairs Secretary Felixberto Serrano. After the conference, Serrano handed over to the President the letter of President Ngo Dinh Diem of Vietnam extending to him an invitation for a state visit next April.

The President also received members of the Home Industries Association of the Philippines led by Hilarion Henares, Sr., during which he approved the participation of the Philippines in five trade fairs in the United States during this year.

As a result of past participation of the country in foreign trade fairs, the volume of trade from home crafts has increased from $16,651.07 in 1956 to $169,799.73 in 1957, Henares informed President Garcia.

The President authorized the trip of Herman P. Neri, Mrs. Concepcion Henares, Prof. Jose Espina, Teo Puruganan, and Mrs. Remedios Grefalda to attend the marketing conference in Seattle.

The President also received officials of Lipa City led by Mayor Baldomero Reyes and relatives of the late Teodoro Kalaw and approved a resolution of the Lipa City Council to declare March 31, 1959, as legal holiday for Lipa in honor of Don Teodoro.

THE President called on all citizens and resident of this country to give generously of their means, time, and efforts to realize the aims and purposes of the Philippine National Red Cross. Then he turned over his personal check for ₱1,000 as his contribution to this year's PNRC fund drive.

The President was the principal speaker at the ceremonies formally launching the 1959 Red Cross fund campaign held this afternoon in the social hall of Malacañang.

This year's goal has been set at ₱1,500,000 and the campaign, which started solicitations on February 14, will continue until March 31. Advance gifts totalling more than ₱70,000 were presented to Mrs. Leonila D. Garcia, honorary national chairman of the campaign, after the program.

In his remarks, President Garcia said that the Red Cross "seeks to protect life, to place life above the importunings of disease, suffering, and misfortune, above and beyond the narrow restrictions of nationality, color, creed, and ideology. That is the Red Cross," he said.

The Chief executive also authorized all national, provincial, city, and municipal government officials and school authorities to accept for the Philippine National Red Cross fund-raising responsibilities, and urged them to take the initiative and active leadership in their respective communities.

Other speakers were Education Secretary Manuel Lim, national chairman of this year's fund drive; and Dr. Paulino J. Garcia, chairman of the PNRC board of governors.

Among those who attended the kick-off ceremonies were members of the Cabinet, the diplomatic corps, representatives of civic and social organizations, ranking government officials, and PNRC staff members.

The officials for this year's fund campaign are Mrs. Leonila D. Garcia, honorary national chairman; Education Secretary Manuel Lim, national chairman; Budget Commissioner Dominador Aytona, national vice-chairman; Alfonso Calalang, chairman of the advance gifts division; Deputy BIR Commissioner Melecio R. Domingo, chairman of the business division; Capt. Rodolfo P. Andal, chairman of the campaign in Manila; Rep. Ramon D. Bagatsing, chairman of the residential division; Mrs. Nancy Q. Sison, regional chairman for Northern Luzon; Gov. Isidro S. Rodriguez, regional chairman for Central Luzon; Brig. Gen. Isagani Campo, regional chairman for Southern Luzon; Most Rev. Julio R. Rosales, regional chairman for the Visayas; Mrs. Gabriela Walstrom, regional chairman for Mindanao, Sulu, and Palawan; and Commissioner Madki Alonto, regional chairman for Muslim population of Mindanao, Sulu, and Palawan.

After his regular weekly press conference this afternoon President Garcia received visiting members of the British Parliament who paid a courtesy call at Malacañang.

They were Lord Moyne, head of the delegation, Lord Farringdon, Humphrey E. Atkins, Esq., John Claude Bidgwood, Esq., Harold Davies, Esq., and David Griffiths, Esq. They were accompanied by British Ambassador George Lisle Clutton, Sen. Lorenzo Sumulong, and Rep. Ramon P. Mitra, chairmen of the foreign affairs committees in the upper and lower houses, respectively.

Another presidential caller this evening was James A. Jacobson, vice-president of the Chase-Manhattan Bank of New York, who was accompanied to Malacañang by Governor Miguel Cuaderno of the Central Bank.

Later, President Garcia motored to his residence in Bohol Avenue, Quezon City, where he received members of the League of Provincial Governors and City Mayors who are now holding a conference in Manila.

THIS AFTERNOON President Garcia said that he expects an early settlement of the country's $900 million omnibus claims if the United States gives the Philippines a "square deal."

At his regular press conference, the President evaded comment on US President Eisenhower's statement last Wednesday that the United States has not taken the Philippines for granted.

At the same time, the President made a detailed defense of the acquisition of the $2.5 million yacht *Lapu-Lapu* and branded as "ridiculous inaccuracies" charges that the presidential boat is more luxurious and swanky than the yacht of the queen of England.

The President also:

1. Frowned upon the congressional move to ban the importation of rice and corn;

2. Justified the lifting of the tax exemption on newsprint as a measure to spur the organization in the country of a factory to manufacture the materials locally; and

3. Debunked Liberal Party claims that the wave of nationalism sweeping the country has been fanned by the Administration in an effort to distract public attention from the cases of graft and corruption in the government.

At his regular press conference, the President pointed out that the Philippine omnibus claims are valid and justified.

He blamed Philippine officials abroad for their failure to present these cases well with Washington officials.

However, he expressed hope that Ambassador Carlos P. Romulo, who had been briefed on these claims, would be able to prosecute these claims to an early and satisfactory settlement.

"We expect a square deal from the United States Government," the President said optimistically as he answered newsmen's question on the outcome of Philippine efforts to secure early settlement on the claims.

He said, "It is my hope that we will be given what is due us."

He likewise called upon the Liberal Party leaders to support the Administration in the prosecution of our claims.

"The Liberals are also Filipinos," the President remarked when asked to comment on the attitude of members of the opposition party.

The President gave a curt "no comment" when asked to assess the US President's statement last Wednesday, claiming that the Philippines has received some $3 billion aid and that the country was not being taken for granted.

"I prefer not to comment on that," the President told the newsmen.

He said all foreign officials abroad, especially those in the United States, have been mobilized to present the country's "just and valid claims" with Washington authorities.

He discredited reports that Ambassador Romulo has been sent back to Washington to do the spade work in the prosecution of these claims.

He said Ambassador Francisco Delgado had been alerted to help in the presentation of these claims with Washington authorities.

The President devoted a considerable portion of the conference to a detailed and strong justification of the recent purchase of the presidential yacht *Lapu-Lapu*.

Asked to comment on Sen. Arturo M. Tolentino's bill seeking to place the presidential yacht at public auction, the President said:

"I don't know what the reason is behind the bill. If it carries the implications that the President made a mistake in ordering the *Lapu-Lapu*, I am afraid, I cannot concur with the suggestion."

He deplored the "talks" bandied about on the recent purchase of the presidential yacht.

In justifying the acquisition of the presidential yacht, the President said:

1. The *Sta. Maria*, present presidential yacht, is already too old for service that it is no longer seaworthy;

2. Operation of the new yacht is more economical;

3. The *Sta. Maria* which is only 900 tons cost $2.1 million dollars when acquired as a minesweeper, converted into a presidential yacht, while the *Lapu-Lapu*, a 2000 tonner, costs only $2.5 million;

4. The *Lapu-Lapu*, will replace the *Sta. Maria* as the flagship of the Philippine Navy.

The President also labelled as "downright misreprensentation," claims that the *Lapu-Lapu* is luxurious and more swanky than the yacht of the Queen of England.

He recalled the *Sta. Maria* had stalled several times during the course of the President's inspection trip to the South that it is believed it is no longer seaworthy.

President Garcia deplored the fact that Commodore Jose Francisco's defense of the government's purchase of the *Lapu-Lapu* before the Senate Blue Ribbon Committee had never been printed.

"I hope my defense of the yacht now," the President said, "would see print in the newspapers tomorrow."

February 21.— AT A LONG CONFERENCE that started at breakfast this morning at his private residence, President Garcia met with members of the House of Representatives and his economic advisers and discussed the economic and fiscal plans he had recommended to Congress, as well as the different proposals advanced by some members of Congress, to solve the economic ills of the nation.

After lengthy discussions that lasted until after lunch, the conferees agreed that the fiscal plan of the Administration will be the basis of discussion of a special committee composed of five members each from both the Senate and the House and from the Executive Department to finalize the legislative measures to be considered for enactment.

Another agreement reached was to expedite the approval of the proper revenue measures for the realization of the stabilization plan. This agree-

ment was adopted after the conferees heard Governor Miguel Cuaderno of the Central Bank underscore the need to act, pointing out that the fiscal position of the government would be in good shape only if the tax measures submitted by Malacañang would be approved.

Governor Cuaderno pleaded for the approval of a proposal to hike the exchange tax in order to do away with controls, to be achieved grudually in four years.

Cuaderno came out vigorously against the proposal to devalue the peso, alleging that it would wreck the country's economy. He said that the inflationary tendencies obtaining in the country were created by government development spending and that it is impossible to maintain a balanced budget and still continue with the development program of the government.

Rep. Jose Roy of Tarlac came out for a reexamination of credit facilities in order to increase production, especially of basic agricultural products. He vigorously opposed the free dollar market proposed by Rep. Sergio Osmeña, Jr., of Cebu and warned his colleagues against "toying" with the currency, pointing out the sad experience of several countries.

Osmeña said that his plan would generate annually about $110 million at present salted away in foreign countries and would increase government income by about ₱200 million, thus bridging the gap between expenses and revenues of the government.

Rep. Luciano Millan, claimed that it is not yet time for exchange decontrol, as the dollars would be channelled to the importation of luxury goods and not to industrial development. Pointing out the unemployment problem, Rep. Millan voiced his opposition to a balanced budget. He proposed deficit spending in the form of a vast public works program to give work to idle hands.

Rep. Vicente Peralta of Sorsogon also spoke at the conference and pointed out that the present economic difficulties of the nation can be traced to the rapid pace of the economic development program. He suggested deceleration of the development program and the adoption of a sound economic stabilization plan.

Others present at the conference were Speaker Daniel Z. Romualdez, Speaker Protempore Constancio Castañeda, House Majority Floor Leader Jose Aldeguer, and Reps. Justiniano Montano of Cavite, Jose Roy of Tarlac, Lorenzo Teves of Negros Oriental, Inocencio Ferrer of Negros Occidental, Tobias Fornier of Antique, Jose Leido of Mindoro, Lucas Paredes of Abra, Vicente Gustilo of Negros Occidental, Maximino Garcia of Bohol, Budget Commissioner Dominador Aytona, Finance Secretary Jaime Hernandez, GSIS General Manager Rodolfo Andal, and DBP Chairman Eduardo Z. Romualdez.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 556

DECLARING TUESDAY, FEBRUARY 17, 1959, AS A SPECIAL PUBLIC HOLIDAY, IN THE PROVINCE OF ILOCOS SUR

WHEREAS, the eighty-seventh anniversary of the martyrdom of Father Jose Burgos falls on February 17, 1959;

WHEREAS, the people of Ilocos Sur, his birthplace, desire that they be given full opportunity to observe the event with appropriate ceremonies;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the authority vested in me by section 30 of the Revised Administrative Code, do hereby declare Tuesday, February 17, 1959, as a special public holiday in the province of Ilocos Sur.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 11th day of February, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the thirteenth.

[SEAL] CARLOS P. GARCIA
President of the Philippines

By the President:

ENRIQUE C. QUEMA
Assistant Executive Secretary

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MALACAÑANG
RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 291

CONSIDERING MESSRS. VICENTE B. CUSTODIO AND ELIAS F. REYES AS HAVING RESIGNED FROM OFFICE AS JUSTICES OF THE PEACE OF SANTA AND NARVACAN, ILOCOS SUR, RESPECTIVELY

This refers to the administrative cases against Messrs. Vicente B. Custodio and Elias F. Reyes, justices of the peace of Santa and Narvacan, Ilocos Sur, respectively, which arose from an anonymous complaint that Jose Bueno, a national prisoner then serving sentence in the national penitentiary at Muntinlupa, Rizal, was allegedly allowed to stay in the municipal jail of Santa, Ilocos Sur, for two months to await the preliminary investigation of a fabricated complaint before the justice of the peace court of said municipality. A special attorney of the Department of Justice conducted a fact-finding investigation which led to the filing of formal charges against Mr. Custodio for neglect of duty and violation of the Rules of Court in continuously postponing the hearing of the slander case against Jose Bueno when he should have immediately inhibited himself because of his relationship to the accused who is his brother-in-law, and against Mr. Reyes for, among others, grave abuse of authority in issuing an illegal order for the confinement of Jose Bueno, a national prisoner, in the municipal jail of Santa, Ilocos Sur, and keeping him there for two months.

The charges were investigated by the District Judge of Ilocos Sur in which respondents did not present any evidence on their behalf but relied solely on their answers and the records of Criminal Case No. 232 of the justice of the peace court of Santa and Criminal Case No. 1181 of the Court of First Instance of Ilocos Sur for their defense.

The undisputed facts are as follows:

Jose Bueno, a brother-in-law of respondent Custodio, was convicted by the Court of First Instance of Ilocos Sur of rape on February 4, 1950, and was sentenced to imprisonment of from 12 years and 1 day to 20 years. This decision was affirmed by the Court of Appeals on September 25, 1953. While the above case was pending, Bueno was again accused of the crime of attempted rape in Criminal Case No. 1181 of the same court.

Before Bueno started serving his sentence on March 15, 1954, a criminal case for grave slander by deed was present-

ed against him in the justice of the peace court of Santa (Crim. Case No. 232) on January 12, 1954. Respondent Custodio accepted the complaint and issued a warrant of arrest for the accused. The following day he accepted and approved the bond for the provisional release of the accused which he had fixed at ₱600. Thereafter and up to January 24, 1956, Custodio did nothing on the case.

On October 19, 1956, the Court of First Instance of Ilocos Sur ordered Bueno brought from Muntinlupa to Vigan for trial in Criminal Case No. 1181. When the case was called on November 23, 1956, it was provisionally dismissed because of the unavailability of the complainant and her witnesses. The next day respondent Custodio called Criminal Case No. 232 for trial, and Bueno pleaded not guilty and announced his intention to present witnesses on his behalf. Respondent Custodio set the case for hearing on December 3, 21, and 27, 1956, and January 26, 1957, but the records do not show what transpired on those dates.

On January 26, 1957, or more than three years from the filing of the complaint in Criminal Case No. 232, respondent Custodio inhibited himself from the case on the ground of his relationship to the accused and requested the designation of the nearest justice of the peace to hear the same. Thereupon the District Judge directed respondent Reyes to take over the case.

On February 5, 1957, acting on the motion of Bueno's counsel, respondent Reyes ordered the confinement of Bueno in the municipal jail of Santa, Ilocos Sur, during the pendency of his criminal case. Bueno, an insular prisoner, remained there from February 5 to April 4, 1957, when respondent Reyes ordered his return to Muntinlupa. During that period respondent Reyes granted several postponement of the hearing of the case, all upon the request of the accused.

Finally, on May 7, 1957, this respondent forwarded the record of Criminal Case No. 232 to the Court of First Instance of Ilocos Sur which dismissed the same on motion of the provincial fiscal for, among other grounds, lack of interest of the offended party.

Respondent Custodio alleges that he did not inhibit himself immediately because the accused might waive his right to a preliminary investigation, and he could remand the case right away to the Court of First Instance. His allegation is untenable. It apears that on November 24, 1956, Bueno, his brother-in-law, entered a plea of not guilty and announced his intention to testify on his behalf and to present witnesses for his defense. Yet respondent did not inhibit himself but, on the contrary, set the case for hearing on December 3, 21, and 27, 1956, and January 26, 1957. Notwithstanding the clear injunction of the Rules of Court,

it took him more than three years to disqualify himself. In the meantime he sat on the case, fixed the amount of bail, and granted numerous postponements.

It is very apparent from the facts and attendant circumstances that respondent Custodio wanted to favor the accused by delaying the proceedings. From the time of the filing of the complaint on January 12, 1954, to March 15, 1954, when the accused, the complainant, and the witnesses were available, respondent did absolutely nothing with the case. And from November 24, 1956, when Bueno pleaded not guilty, to January 26, when respondent finally inhibited himself, he issued several subpoenas to the accused to appear for trial which never took place, clearly indicating a pattern of procedure calculated to enable the accused, his brother-in-law and a national prisoner, to be in his home town of Santa, Ilocos Sur. When the case was indorsed to Reyes, the other respondent, it was already after more than three years. The latter forwarded the case to the Court of First Instance where it was dismissed upon motion of the provincial fiscal for lack of interest on the part of the complainant.

Respondent Reyes contends that in ordering the confinement of a national prisoner in the municipal jail of Santa without previous approval of superior judicial officers he did not violate any law or regulation. This contention is without merit. His said order was patently illegal. The fact that the prisoner was then temporarily detained in the stockade of the PC Headquarters at Vigan, Ilocos Sur, did not give respondent authority to issue his aforesaid order. In the first place, Bueno's presence in Vigan was in obedience to a subpoena of the Court of First Instance of Ilocos Sur issued for the purpose of securing his attendance at the hearing of Criminal Case No. 1181. Secondly, Bueno was then an insular prisoner under the "supervision and control" of the Bureau of Prisons which was "charged with his safekeeping" (Sec. 1707, Rev. Adm. Code). By his order of February 5, 1957, respondent Reyes illegally deprived the Director of Prisons of the custody and safekeeping of the prisoner for two months—an unwarranted interference and a grave abuse of authority.

Under the law, processes of inferior courts "shall not be served outside the boundaries of the province comprising their respective municipalities, except with the approval of the judge of first instance of said province" (Sec. 4, Rule 124, Rules of Court). And "if a prisoner, not confined in a municipal jail, is required to appear before an inferior court, the Judge of the Court of First Instance of the province where the inferior court is sitting, or any Justice of the Court of Appeals or of the Supreme Court may issue the subpoena" (Sec. 2, Rule 29, *ibid.*). Prisoner

Jose Bueno, who was serving a 20-year term of imprisonment in the national penitentiary, was "not confined in a municipal jail" but was under the legal custody of the Director of Prisons. Yet, respondent Reyes issued the order of February 5, 1957, under his own authority and without coursing the same through the Judge of the Court of First Instance of Ilocos Sur.

It is significant to note that in the motion of Bueno's counsel dated February 4, 1957, it was prayed that the accused be "ordered confined either at the place where he is still confined at the Stockade, PC Hq. Tamag, Vigan, Ilocos Sur, or at the Municipal jail at Santa, Ilocos Sur, or at any other place allowed by law where his safety is secured." Strangely, respondent chose to have the accused confined at Santa, Ilocos Sur, which choice he immediately effected through the issuance of his illicit order. Thereafter, he sat on the case against Bueno for two months by granting three postponements all upon the request of the accused. I am thus inclined to believe that respondent Reyes, with grave abuse of authority, adopted this course of action for no other purpose than to enable the prisoner, a brother-in-law of his fellow justice of the peace, to enjoy a prolonged stay in his home town of Santa, Ilocos Sur.

The District Judge recommended that the respondents be suspended from office for one month. However, the then Secretary of Justice believed that the seriousness of the irregularities committed warranted their complete separation from the service. After considering the matter carefully, I believe that the judge's recommendation is rather too lenient and that of the former Secretary somewhat severe, involving as it does forfeiture of benefits for service in the Government. A course somewhat in the middle is believed appropriate in the premises.

Wherefore, Messrs. Vicente B. Custodio and Elias F. Reyes are hereby considered as having resigned from office as justices of the peace of Santa and Narvacan, Ilocos Sur, respectively, effective upon receipt of a copy of this order, without prejudice to receiving such retirement and/or other benefits as they may be entitled to under the law.

Done in the City of Manila, this 11th day of February, in the year of Our Lord, nineteen hundred and fifty-nine, and of the Independence of the Philippines, the thirteenth.

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

RESOLUTIONS OF CONGRESS

S. CT. R. No. 10

Adopted during the Fourth Congress of the Philippines Second Session

[CONCURRENT RESOLUTION No. 11.]

CONCURRENT RESOLUTION AUTHORIZING THE APPOINTMENT OF A JOINT COMMITTEE OF BOTH HOUSES TO NOTIFY THE PRESIDENT OF THE PHILIPPINES THAT THE CONGRESS NOW CONVENED IN REGULAR SESSION, IS READY TO RECEIVE HIS MESSAGE, IF ANY, IN A JOINT SESSION.

Resolved by the Senate, the House of Representatives of the Philippines concurring, To authorize, as it hereby authorizes, the appointment of a joint committee of both Houses of the Congress to be composed of six members, three to be appointed by the President of the Senate, and three by the Speaker of the House of Representatives, to notify the President of the Philippines that the Congress now convened in regular session, is ready to receive his message, if any, to the Congress for the opening of the Second Session of the Fourth Congress of the Republic of the Philippines in a joint session for the purpose.

Adopted, January 26, 1959.

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Department of Justice

OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER No. 15

February 3, 1959

DESIGNATING ATTYS. ANTONIO H. GARCES, CUSTODIO L. PADILLA, NICANOR MANALO AND ROBERTO B. STO. DOMINGO OF THE BUREAU OF INTERNAL REVENUE TO ASSIST ALL PROVINCIAL AND CITY FISCALS AND ATTORNEYS ALL OVER THE PHILIPPINES.

Upon request of the Secretary of Finance, in the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, as amended, Attys. Antonio H. Garces, Custodio L. Padilla, Nicanor Manalo and Roberto B. Sto. Domingo, of the Bureau of Internal Revenue, are hereby designated to assist all provincial and city fiscals and attorneys all over the Philippines, in the investigation and prosecution of all violations of the internal revenue laws, subject to the direction and control of the said provincial and city fiscals and attorneys, effective immediately and to continue until further orders.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 16

February 5, 1959

DESIGNATING ATTYS. LEOPOLDO A. FRANCISCO AND AURELIO B. DE JESUS OF THE AGRICULTURAL CREDIT AND COOPERATIVE FINANCING ADMINISTRATION AS SPECIAL COUNSELS TO ASSIST THE PROVINCIAL FISCAL OF BULACAN.

Upon request of the Administrator, ACCFA, in the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Messrs. Leopoldo A. Francisco and Aurelio B. de Jesus, Attorneys in the Agricultural Credit and Coopertive Financing Administration, are hereby designated Special Counsels to assist the Provincial Fiscal of Bulacan in the prosecution of: (1) People *vs.* Uldarico Mutuc for estafa, Criminal Case No. 3516; (2) People *vs.* Santos de los Santos for estafa; Criminal Case No. 3539; and (3) People *vs.* Manuel Cuaresma for malversation. Criminal Case No. 3540, all in the Court of First Instance of Bulacan, subject to the direction and control of the Provincial Fiscal, effective immediately and to continue until further orders, without additional compensation.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 17

February 3, 1959

DESIGNATING ATTY. IRENEO BIGLETE, LEGAL OFFICER IN THE POLICE DEPARTMENT OF SAN PABLO CITY AS SPECIAL COUNSEL TO ASSIST THE CITY ATTORNEY OF SAN PABLO CITY.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administraive Code, Atty. Ireneo Biglete, Legal Officer in the Police Department of San Pablo City, is hereby designated Special Counsel to assist the City Attorney of San Pablo City in the discharge of his duties, subject to the direction and control of the City Attorney, effective immediately and to continue until further orders, without additional compensation.

JESUS G. BARRERA
Secretary of Justice

Department of Public Works and Communications

DEPARTMENT ORDER NO. 287

RULES AND REGULATIONS GOVERNING THE CITIZENS RADIO SERVICE

January 2, 1959

Pursuant to the provisions of the Radio Control Law, Act 3846, as amended by Commonwealth Act 571 and Republic Act No. 584, the following rules and regulations governing the construction, installation, establishment and operation of the citizens radio service are hereby promulgated to take effect immediately:

SECTION 1. *Nature of service.*—Citizens radio service is intended for private or personal short distance radiotelephone communication and radio control of objects or devices such as model airplanes, boats or cars.

SEC. 2. *Qualification of an applicant.*—An applicant for citizens radio service, if an individual, must be a citizen of the Philippines, at least 18 years of age, must be of good moral character, and if a corporation, must be one organized under the laws of the Philippines; *Provided,* That in the case of the latter, the operation of the station must be handled by a citizen of the Philippines possessing the other qualifications herein provided.

SEC. 3. *Equipment requirement.*—The equipment should be built and installed in accordance with good engineering practice. The transmitter and receiver must be pre-tuned and should not require any re-setting, aligning or any similar operation by the operator except the turning on and off of the power switch and the adjustment of volume control. The equipment should be so designed that none of the operations necessary to be performed during the course of normal service may cause off-frequency operation or result in any unauthorized dariation.

SEC. 4. *License required.—No* citizens radio or license will be required of persons to operate mit and no such station may be operated without the License issued by this office.

SEC. 5. *Operators.*—No radio operator permit mit or license will be required of persons to operate a citizens radio station provided that they meet the requirements under Section 2, hereof.

SEC. 6. *Power authorized.*—The maximum power input authorized for citizens radio service is 10 watts.

SEC. 7. *Frequencies, frequency, tolerance and maximum bandwidth allowed.*—The following frequencies are hereby allotted to the citizens radio service, as follows:

(1) *Private or personal short distance radiotelephone communication.*—Any frequency between 460.1 to 467.9 Mc/s, with frequency tolerance of 0.02 per cent and a maximum bandwidth of 200 Kc/s.

(2) *For radio control of objects and devices.*—Any frequency between 468.1 to 469.9 Mc/s, with a frequency tolerance of 0.02 per cent and a maximum bandwidth of 200 Kc/s.

SEC. 8. *Illegal operations.*—Citizens radio stations shall not be used for any purpose contrary to law, or for broadcasting to the public in any way and shall not be allowed to be used by any person for pecuniary consideration. The licensee may allow another person to operate the station but the former shall be liable for any violation committed by the latter.

SEC. 9. *Renewal of station license.*—Application for renewal license for the operation of citizens radio station should be submitted at least 60 days prior to the date of expiration.

SEC. 10. *Fees.*—The following fees shall be paid to the Radio Control Division:

For radio station construction permit fee	₱5.00
Annual license fee for citizens radio station	10.00

SEC. 11. *Penal provisions.*—Any person who shall violate any provision of these regulations shall be punished by a fine of not more than TWO THOUSAND PESOS (₱2,000.00) and/or imprisonment for not more than two (2) years for each and every offense or both, in the discretion of the Court. Any corporation, company or association violating any provision hereof shall be punished by a fine of not more than FIVE THOUSAND PESOS (₱5,000.00) for each and every offense.

SEC. 12. *General provisions.*—All provisions of the Radio Control Law, Act 3846, as amended, and the regulations promulgated thereunder which are not inconsistent herewith are made a part hereof and shall have full force and effect as though incorporated herein.

SEC. 13. Department Order No. 195, dated May 14, 1958, is hereby repealed.

FLORENCIO MORENO
Secretary of Public Works and Communications

Department of Agriculture and Natural Resources

BUREAU OF PLANT INDUSTRY

PLANT INDUSTRY ADMINISTRATIVE ORDER
No. 12, REVISED
Series of 1949

REGULATING THE IMPORTATION OF CACAO PLANTS AND PARTS THEREOF, SUCH AS FRESH CACAO BEANS, PODS OR BUDSTICKS, ETC., PARTICULARLY OF THE FORASTERO AND TRINITARIO TYPES OF CACAO INCLUDING THEIR HYBRIDS FROM WEST AFRICA, COLOMBIA, CEYLON, ETC., IN ORDER TO PREVENT THE INTRODUCTION INTO THE PHILIPPINES OF CACAO DISEASES AND PESTS KNOWN AS THE SWOLLEN SHOOT VIRUS, WITCHES BROOM (MARASMIUS PERNICIOSUS), VIRUS DISEASES, ETC., EXCEPT FOR CERTAIN PURPOSES AND UNDER CERTAIN CONDITIONS; AND PROHIBITING THE MOVEMENT OF SAID TYPES OF CACAO FROM LUZON TO THE VISAYAN ISLANDS AND MINDANAO.

Whereas, there is known to exist in West Africa, Ceylon, Colombia, etc., certain diseases known as the Swollen Shoot Virus, Witches Broom (*Marasmius perniciosus*), virus diseases, etc., which attack the cacao plant;

Whereas, these diseases do not yet exist in this country; and

Whereas, if these diseases were introduced into this country, it would be a menace to our cacao growing industry.

Now, therefore, under authority conferred upon me by section 1757 of Act No. 2711, known as the Administrative Code and sections 1, 7, 10 and 11 of Act No. 3027 of the Philippine Legislature, entitled "An Act to Protect the Agricultural Industries of the Philippine Islands from Injurious Pests and Diseases Existing in Foreign Countries, etc." the following regulations are hereby promulgated to govern and regulate the importation, bringing or introduction of cacao plants and parts thereof, such as fresh cacao beans, pods, budsticks and other parts of the cacao plant capable of propagation or of carrying said disease into the Philippine Islands from the above mentioned places and the movement in the Philippines of the Forastero and Trinitario types of cacao and their hybrids.

SECTION 1. The importation of Forastero and Trinitario types of cacao, including their hybrids for planting or propagation purposes from any foreign country is hereby prohibited, with the exception of those covered by a permit previously issued by the Director of Plant Industry.

SEC. 2. The importation of cacao plants or parts thereof such as fresh cacao beans, pods, seedlings, budsticks and other parts of the Criollo type of cacao plant capable of propagation and of carrying the said diseases from West Africa, Ceylon, Colombia, etc. is hereby prohibited: *Provided*, however, that the importation through the Port of Manila of small quantities of cacao pods, fresh cacao beans, seedlings or budsticks of the Criollo type may be permitted in order to secure better varieties, new propagating stock, or specimens for experimental purposes, in accordance with section 2 of Administrative Order No. 2, revised, series 1954, of this bureau. Such importation must be made through the Director of Plant Industry subject to the provisions of said Administrative Order No. 2 and to the conditions that the imported stock must be held in quarantine in an isolation station until it is evident that no plant diseases or injurious insects are present on such plants or plant materials.

SEC. 3. The importation of dried cacao beans not capable of propagation for private or commercial purposes from West Africa, Ceylon, Colombia, etc., or any other foreign countries will be permitted provided the shipment is covered by a permit issued by the Director of Plant Industry and accompanied by a certificate of inspection issued by the proper authorities in the countries or places of origin to the effect that the shipments are free from injurious insects and/or plant diseases.

SEC. 4. Cacao plants, seedlings, cuttings or budsticks or pods or fresh seeds of said plant imported in contravention of the provisions of this Order shall be seized by the Director of Plant Industry or by his duly authorized representatives and shall be either immediately returned to the country or place of origin, or completely destroyed, or treated, according to the decision which the Director of Plant Industry may make in the premises; *Provided*, That the cost of the return, or the destruction or treatment of the said plant material shall be borne by the importer.

SEC. 5. The movement of plant materials of the Forastero and Trinitario types of cacao including their hybrids from any part of the Philippines, particularly from the Luzon group where the cacao

pod borer, black rot or cacao pods, etc., are present, to the Visayan Islands and Mindanao, is likewise hereby prohibited.

SEC. 6. Any unauthorized importation from abroad or shipment of Trinitario and Forastero types of cacao and their hybrids from any province in Luzon and other islands belonging to the Luzon group to the Visayan Islands and Mindanao shall be seized by the Director of Plant Industry or his duly authorized representatives for destruction or returned to its sender at the expense of the parties concerned.

SEC. 7. Any person, firm association, or corporation, who shall violate or contravene any of the provisions of this Administrative Order shall be liable to prosecution, and upon conviction shall suffer the penalty provided in section 13 of Act No. 3027, which is a fine not exceeding one thousand pesos (₱1,000.00) or imprisonment not exceeding six months, or both, such fine and imprisonment, in the discretion of the court.

SEC. 8. This Administrative Order shall take effect upon the date of approval of the Secretary of Agriculture and Natural Resources.

Approved: December 23, 1958.

JUAN DE G. RODRIGUEZ
Secretary of Agriculture and Natural Resources

Recommended by:

EUGENIO E. CRUZ
Director of Plant Industry

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Nominations submitted by the President to the Commission on Appointments for Confirmations:

February 1959

Tomas de Vera as Chairman, and Jose Agustines, Alberto E. Filamor, Antonio Avecilla, Jose C. Rivera, Sancho Inocencio, and Feliciano Romero as Members of the Board of Assessment Appeals of Manila, February 11.

Elias M. Caray as President of the Central Luzon Agricultural College, February 11.

Nicolas Ybañez as Chairman, and Basilio Sumodobila, Sergio Sanchez, Eduardo Deza Mercado, and Roque V. Andaya as Members of the Board of Assessment Appeals of Butuan City, February 11.

HISTORICAL PAPERS AND DOCUMENTS

ADDRESS OF PRESIDENT CARLOS P. GARCIA AT THE OPENING OF THE FOURTH INTERNATIONAL STUDENT'S FESTIVAL, UNIVERSITY OF THE PHILIPPINES, QUEZON CITY, AT 10 A.M., FEBRUARY 16, 1959

PRESIDENT SINCO, DISTINGUESHED GUESTS, MEMBERS OF THE FACULTY, STUDENTS, AND FRIENDS:

I AM pleased to be with you on this festive occasion. Some of you may recall that only three months ago I was on this campus to deliver the opening address of the Conference of Asian Universities on Cultural Cooperation. I am told that the purpose of this celebration complements the objectives of that conference. The emergence in recent years of new independent nations in Asia has made imperative a reorientation of cultural and spiritual values in this part of the world. It seems to me that this festival dramatizes that new concept—a concept based on a mutuality of interests, closer cultural ties, and sincere understanding among Asian nations.

I congratulate the University of the Philippines and its President for the establisment and operation of an exchange scholarship program in this area. Their efforts, as evidenced by this cordial gathering, directly contribute to the evolving of solidarity among kindred peoples who were politically separated from each other for centuries as a result of colonialism.

My administration is committed to a policy of friendship with our Asian neighbors. I have taken and will continue to take positive steps toward the realization of this policy. My trip to Japan last December was made in pursuance of this objective. You will recall that the press enthusiastically supported that mission, in the realization that its success would hasten the return of normal and friendly relations between two former enemy countries. Such relations must be restored for the sake of peace in Asia as well as in the whole world. The recent state visit of Prime Minister Tunku Abdul Rahman of Malaya was another proof of our untiring efforts to establish closer cultural and economic cooperation among Asia's free nations.

The friendship that we seek in Asia and in other parts of the world is one that is premised on mutual respect and appreciation of one another's integrity. On this ground alone does this country stand, its arms outstretched in a sincere gesture of friendship for peoples everywhere.

As I understand it, the Southeast Asia scholarship program of this University attempts to give meaning to our democratic ideals as a nation. By making possible the coming of Asian scholars to the Philippines, the program forges an

enduring link in the chain that binds us in this region. In a sense it is a most effective instrument, because it deals with the minds of men. Its raw materials are ideas, its goals the liberation of the human spirit from the bondage of ignorance. Its ideal is freedom.

At this point I should remind you that our country is unconditionally committed to support the various pacts and alliances of which it is already a member. Without exception, these unions are based on sound democratic values. They represent a free and collective will to survive in a world torn by violent dissensions and threatened by nuclear annihilation. But these very same pacts necessarily place emphasis on the defensive economic, political, and military aspects. The educational and the cultural are, as it were, only incidental aspects.

Not too much emphasis has been given to the educational, the cultural, and the artistic elements of Asian life. And this is where I see the scholarship program of the University of the Philippines as a positive influence for the establishment of a more intense, more direct, and vastly more effective cultural cooperation among the peoples of Asia.

Let us not minimize the urgent role of economic or military assistance which the more highly developed countries give to the less industrially developed. In many cases such aid brings crucial relief. But material goods, no matter how profuse, soon disappear. Food and shelter; agricultural implements and machinery; ships and airplanes; dams, acqueducts, and railways are all essential commodities. They help sustain life. Yet they all pass away with time. Ideas and ideals, on the other hand, never die. Every single scholar that comes and goes through the portals of this University returns to his own country at least a potential human reservoir of goodwill and democratic ideals.

Similarly, Filipino scholars sent under the program to neighboring Asian countries become living instruments of cultural unity. In searching through the libraries of the great universities of India, Indonesia, Malaya, China, and Japan—to mention just a few—these scholars imbibe the wisdom and the culture of those ancient civilizations. They bring back to the Philippines a keener appreciation for their neighbors' culture, as well as a more tolerant outlook on other people's views.

It is good that this festival stresses the things that unite the mind rather than those which divide it. It is fortunate that in this atmosphere of cordiality, the Asian nations mix freely with the rest of the peoples of the world. For here is the unrehearsed camaraderie of men of diverse faiths and diverse colors, united by a common factor: a heritage of freedom. And because freedom is essentially indivisible, because it recognizes no barrier of place or time or color, it can unite where other factors might fail.

The great paradox of our time can be stated simply. It is this: that while man's genius continues to shrink the universe through the conquest of space, the minds and the hearts of men seem to drift farther away from one another. The issues which divide them tend to become sharper with each passing day.

On my part I refuse to believe that the cleavage is either permanent or necessary. I believe that if we search deeply into our own hearts, we would find therein enough commonness of feeling and singleness of purpose. We would discover an innate trust in the capacities of man to be an instrument of goodwill toward all of his fellowmen.

Perhaps what we need are more gatherings of the kind we have here today. Here peoples of different origins, of different languages, and of different religious views work in practical harmony toward the achievement of a common goal. Here there is no insidious rivalry, no gripping tension. There is rather a community of minds speaking in various forms but seeking a oneness of spirit.

All this is happily made possible by the Southeast Asian scholarship program of this University with, I understand, the financial support of the Asia Foundation. It is my wish to see this project expanded, if necessary, with the generous assistance of our own civic-spirited citizens. The criticism has too often been levelled at our people that they are prone to be over-dependent on the Government. Although the charge may be valid in its general application, experience has demonstrated that the opposite is true in many instances. Private initiative and private funds have been responsible for some of the most successful civic ventures in our country. No statistics, I am sure, are needed to prove this statement.

I call on our more fortunately situated citizens—on the business men, the industrialists, the financiers, the professionals—to come forward and support this scholarship program. I ask them to extend a helping hand, with vision and generosity, in order that their own country might take a rightful place of honor in the family of Asian nations. I ask them to invest in human goodwill—an investment to be reckoned not in terms of profit and loss, but in unselfish service.

The University of the Philippines has meager resources and cannot afford by itself to sustain the program. Foreign foundations and agencies have been generous in their assistance to some of our national projects. But obviously they cannot and should not be expected to carry the burden indefinitely. We have to help ourselves if we must achieve our destiny as a people.

In parting, let me congratulate the foreign students of this University, as well as all others who are responsible for this festival.

I believe they are rendering invaluable service to their respective countries, to Asia, and to the rest of the world. I join them in their prayer for world peace and genuine international understanding.

I now declare the Fourth International Students' Festival formally open.

DECISIONS OF THE SUPREME COURT

[No. L-9300. 18 April 1958]

MARIANO A. ALBERT, plaintiff and appellee, *vs.* UNIVERSITY PUBLISHING CO., INC., defendant and appellant

1. OBLIGATIONS AND CONTRACTS; RECIPROCAL OBLIGATIONS; BREACH OF CONTRACT; CASE AT BAR.—For the exclusive right to publish a manuscript containing commentaries on "The Revised Penal Code of the Philippines," written by appellee, the appellant corporation agreed to pay to the appellee ₱30,000 payable in 8 quarterly installments. The parties stipulated that should the appellant fail to pay any of the installment due, the rest shall be deemed due and payable whether there is judicial or extrajudicial demand. For his part, appellee obligated himself to deliver to the appellant the said manuscript not later than December 31, 1948. Appellee claims that appellant corporation breached the contract when it failed to pay the full amount of the installment for the first quarter. On the other hand, appellant contends that the appellee failed to deliver to it the manuscript on the date stipulated in the contract and for that reason it was no longer under obligation to pay the unpaid balance of the installments. *Held:* The first point to consider is whether appellee had performed his part of the contract. The evidence shows that on 16 December 1948 appellee wrote a letter advising the appellant corporation that the manuscript subject of the contract was then at its disposal, ready to go to the printer should the appellant desire to publish it. Although the appellant's President denied having received the letter, yet the trial court found that such letter was written and delivered to the appellant, a finding supported by a preponderance of evidence. This constitutes delivery of the manuscript for delivery does not mean physical or material delivery thereof. But while the delay in the payment of the first quarterly installment may not amount to a breach of contract to justify the enforcement of the stipulation set forth in the contract because appellee accepted payment which completed and paid the full amount of the installment due, it appearing that appellant made no further payment on the installments due, the stipulation in the contract has to be enforced.

2. ID.; ID.; ID.; REMEDIES OF INJURED PARTY; LIQUIDATED DAMAGES.—In reciprocal obligations, where one of the obligors failed to comply with what was incumbent upon him, the injured party could choose between requiring specific performance of the obligation or its resolution with indemnity for losses and payment of interest. In the case at bar, the aforesaid stipulation in the contract may be considered as liquidated damages to be paid in case of breach of the contract.

APPEAL from a judgment of the Court of First Instance of Manila. Concepción, *J.*

The facts are stated in the opinion of the Court.

Antonio M. Molina for plaintiff and appellee.

Pedro C. Mendiola and *Borgonio E. Cruz* for defendant and appellant.

PADILLA, *J.*:

This is an appeal from a judgment rendered by the Court of First Instance of Manila, ordering the defendant corporation to pay to the Administrator of the estate of the late Mariano A. Albert, who died during the pendency of the case, the sum of ₱23,000, interest thereon from the date of the filing of the complaint, and costs, and dismissing the defendant's counterclaim, certified to this Court by the Court of Appeals for the reason that the total amount sought to be recovered by the defendant corporation exceeds ₱50,000.

On 19 July 1948 the plaintiff and the defendant corporation entered into a contract whereby, for and in consideration of the exclusive right to publish or cause to be published a manuscript containing commentaries on " 'The Revised Penal Code of the Philippines,' as amended until July 15, 1948," written by the plaintiff, for a period of five years from the date of execution of the contract; of the liquidated balance due the plaintiff as his share in the sale of the reprinted copies of the book as stipulated in a contract executed on 21 May 1946 by and between him and the defendant corporation (Exhibit 1); and of the liquidated share of the plaintiff in the sale of 1,500 reprinted copies of the book, the defendant corporation undertook to pay the plaintiff the sum of ₱30,000 in eight quarterly installments of ₱3,750 each, beginning 15 July 1948 (Exhibit A). The most important stipulations of the contract are the following:

1. That the PARTY OF THE FIRST PART is the author and sole proprietor of a manuscript which is his revised commentaries of "The Revised Penal Code of the Philippines" as amended until July 15, 1948;

2. That the PARTY OF THE FIRST PART hereby grants to the PARTY OF THE SECOND PART the exclusive right to publish or cause to be published the said manuscript within a period of five (5) years from the execution of this document, provided that the total number of copies to be printed within said period shall not be more than four thousand (4,000) copies;

4. That the PARTY OF THE SECOND PART hereby agrees to pay to the PARTY OF THE FIRST PART, for the exclusive right to publish the manuscript, object of this contract, for a period of five (5) years counted from the date of execution of this document; for the liquidated balance due him as his share in the sales of the reprinted copies of the first edition of this book as per contract between both parties dated May 21, 1946; and for his liquidated share in the sales of

another One thousand five hundred (1,500) reprinted copies in 1948 of said book, now in the press: the total amount of Thirty thousand pesos, (₱30,000) payable in eight (8) quarters at the rate of Three thousand seven hundred-fifty (₱3,750) pesos a quarter, the first quarter to begin from July 15, 1948. It is also agreed that should the PARTY OF THE SECOND PART fail to pay to the PARTY OF THE FIRST PART any one of the eight installments referred to when due, the rest of the installments shall be deemed due and payable, whether there is judicial or extra judicial demand made by the PARTY OF THE FIRST PART. In this event, the PARTY OF THE FIRST PART shall take charge of the publication of this book, and in case it has already been published, will take over the sale and distribution of the printed book, without any right on the part of the PARTY OF THE SECOND PART to participate in its proceeds.

7. That the PARTY OF THE FIRST obligates himself to deliver to the PARTY OF THE SECOND PART the manuscript in its final form not later than December 31, 1948; provided, however, that the PARTY OF THE SECOND PART shall have no right to make any change in the manuscript as prepared by the PARTY OF THE FIRST PART who, if the circumstances do permit, must stamp his approval in the printer's final proof.

In the event of the impossibility for the PARTY OF THE FIRST PART to deliver the manuscript complete by December 31, 1948, THE PARTY OF THE SECOND PART shall no longer be under the obligation to pay the installments remaining payable by virtue of the provisions of the contract, unless the PARTY OF THE SECOND PART undertakes to complete the same by inserting the latest decisions of the Supreme Court as digested and/or commented upon by the PARTY OF THE FIRST PART.

The defendant corporation paid ₱1,000 to the plaintiff on 31 July 1948 (Exhibits B and 2); ₱1,000 on 10 September 1948 (Exhibit 2–A); ₱2,000 on 10 November 1948 (Exhibits C, C–1 and 2–B); ₱2,000 on 29 November 1948 (Exhibit 3); and ₱1,000 on 24 December 1948 (Exhibit 3–A), or a total of ₱7,000. The defendant corporation made no other or further payment to the plaintiff on account of the contract.

The evidence for the plaintiff shows that on 16 December 1948 he wrote a letter advising the defendant corporation that "The manuscript of my Commentaries on the Revised Penal Code, subject matter of our Contract executed on the 19th of July this year, is now at your disposal." (Exhibit D.)

The plaintiff claims that the defendant corporation breached the contract when it failed to pay the full amount of the installment for the first quarter on or before 15 October 1948, the last day within which to pay it. The defendant corporation contends that the plaintiff failed to deliver to it the manuscript in its final form not later than 31 December 1948 as stipulated in paragraph 7 of the contract (Exhibit A).

The first point then to determine is whether the plaintiff had performed his part of the contract as stipulated in paragraph 7 of the aforesaid contract.

Upon plaintiff's demand and defendant's failure to produce and exhibit the original of the letter dated 16 December 1948 already referred to, the plaintiff read in evidence the contents of a copy of said letter (Exhibit D). Concepción K. de Vera, the stenographer who took down by shorthand the dictation of the plaintiff, identified it as the carbon copy of the original and testified that the original was sent to the defendant corporation. On cross-examination she exhibited and read to the Court the notes from which she typed the original letter. The President of the defendant corporation denies having received not only the original of the letter dated 16 December 1948 but also the original of a letter dated 27 April 1949 (Exhibit E) written by the plaintiff to the defendant corporation. In the last letter reference to the preceding letter of 16 December 1948 (Exhibit D) was made and a demand for payment of the installments due and unpaid was also made. The defendant corporation admits, however, the receipt of the original of the letters dated 15 August 1949 (Exhibit F) and 6 June 1949 (Exhibit G). In the first letter (Exhibit F) the plaintiff reminded the defendant corporation of its promise to settle the installment due on 15 April and 15 July and the balance of the installment due and unpaid of 15 December (January); and in the second (Exhibit G) the plaintiff reminded the defendant of its due and unpaid installments and stated that, in view of the apparent inability of the defendant corporation to fulfill its part of the contract, he would consider the contract rescinded and would publish the revised edition next month (July) at his expense. The defendant corporation has not answered these two letters.

The mere denial by the President of the defendant corporation is not sufficient to outweigh and overcome the evidence showing that the plaintiff advised the defendant corporation that the manuscript of the commentaries on the Revised Penal Code, subject matter of the contract executed on 19 July 1948, was ready for delivery to, and at the disposal of, the defendant corporation for publication. The defendant corporation failed to pay on or before 15 October 1948 the first installment due, because it had paid only ₱1,000 on 31 July 1948 and another ₱1,000 on 10 September 1948. When the defendant corporation paid ₱2,000 on 10 November 1948, it was after the last day fixed for the payment of the first installment. But that delay in the payment of the first quarterly installment may not amount to a breach to justify the enforcement of the stipulation set forth in paragraph 4 of the contract (Exhibit A) because the plaintiff accepted the payment of ₱2,000 on 10 November 1948, which completed and paid the full amount of the first installment due and left a

balance of ₱250 to be credited to the second installment due on 15 January 1949. On this last mentioned date the total amount paid by the defendant corporation, including the sum of ₱250 in excess of the amount paid for the first quarterly installment, was ₱3,250 or ₱500 short of the total amount due on such date corresponding to the second quarterly installment. As the defendant corporation has made no further payment, the stipulation in paragraph 4 of the contract has to be enforced.

The defendant corporation argues that the fact that the mimeographed copies of plaintiff's book or commentaries on the Revised Penal Code published by the PHILAW Publishing Company does not contain cases decided by the Supreme Court up to 1948 is proof that contrary to plaintiff's claim the manuscript which the plaintiff bound himself to write and finish on or before 31 December 1948 was not ready for publicaton on 16 or 31 December 1948. There is no evidence, however, that the mimeographed copies of the book published and sold in November 1949 by the plaintiff or the PHILAW Publication Company were the same as that offered for delivery by the plaintiff to the defendant corporation on 16 December 1948. Besides, there is no stipulation in the contract that the commentaries would include cases decided by the Supreme Court up to 1948. Nowhere in the contract may such stipulation be found.

The action brought by the plaintiff is not for rescission of a contract, under which theory or belief both parties seem to have proceeded and labored, but for a resolution of reciprocal obligations because one of the obligors failed to comply with that which was incumbent upon him. The injured party could choose between requiring specific performance of the obligation or its resolution with indemnity for losses and payment of interest.[1] The stipulation in paragraph 4 of the contract (Exhibit A) may be considered as liquidated damages to be paid in case of breach of the contract.[2] The defendant corporation has not paid the share of the plaintiff in the proceeds of the sale of the first 1,000 copies of the book printed and sold by the defendant corporation as agreed upon in the contract entered into by and between the parties on 21 May 1946 (Exhibit A). In the original and amended answers of the defendant corporation it is alleged that said copies remained unsold, but on the witness stand José M. Aruego, President of the defendant corporation, admitted that 800 copies thereof had been sold. There is also a share due the plaintiff in the sale of 1,500 reprinted copies of the

[1] Article 1124, old civil code; article 1191, new civil code.
[2] Article 2226, new civil code.

book. But how much that share amounts to, the evidence does not throw any light, in like manner that there is no evidence to show how much is due the plaintiff as his share in the sale of 800 copies of the book.

The counterclaim of the defendant was correctly dismissed by the trial court, because it found that the one who had breached the contract is the defendant corporation. Such being the case, the defendant corporation cannot claim any damage against the plaintiff. Aside from that, it is difficult to believe that from 1946 to the time when the contract of 16 July 1948 was signed, the defendant corporation could not and had not disposed of the 1,000 copies of the book. Such is the import of the letter of 18 June 1948 written by the plaintiff to José M. Aruego, President of the defendant corporation (Exhibit H). It is also difficult to believe that not a single copy of the 1,500 copies of the book subsequently reprinted was sold, because of the publication and sale by the PHILAW Publishing Company of the mimeographed copies of the book. From 1948 to November 1949 when the mimeographed copies of the book were sold, there was sufficient time for the sale and disposition of the 1,500 reprinted copies of the book. There is no evidence that long before November 1949 there had been an announcement or publication that copies of commentaries on the Revised Penal Code by the plaintiff would be mimeographed and ready for distribution and sale.

Although the defendant corporation breached the contract, as found by the trial court, and there is no reason which may find support in the evidence for disturbing such finding, yet we believe that in the absence of evidence to show the amount that should accrue to the plaintiff as his share in the proceeds of the sale of 1,000 copies of the book and of 1,500 copies of the reprinted book that were in press when the contract of 19 July 1948 was entered into, and the amount of profits that the plaintiff would derive from the sale of the books to be printed, as agreed upon in the contract of 19 July 1948, the amount of liquidated damages is rather excessive, because even if the books were sold at ₱40, ₱35 or ₱30, as hinted by José M. Aruego, the president of the defendant corporation, in his testimony, the cost of paper, printing, binding, advertising, sales promotion and other incidental disbursements should be deducted from the gross proceeds. For that reason and in accordance with the provisions of article 2227 of the new Civil Code, the reasonable amount of liquidated damages that must be awarded to the palintiff as a result of the breach by the defendant corporation of the contract is equitably reduced to ₱15,000.

With this modification as to the amount of liquidated damages, the judgment appealed from is affirmed, with costs against the appellant.

Parás, C. J., Montemayor, Reyes, A., Bautista Angelo, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.*, concur.

Judgment affirmed with modification.

17 September 1958

RESOLUTION ON THE MOTION FOR RECONSIDERATION

José M. Aruego for defendant and appellant.

PADILLA, *J.:*

This is a motion for reconsideration of the judgment rendered in this case on the ground that "the plaintiff did not deliver the manuscript on or before December 31, 1948," as agreed upon in the contract entered into by and between the parties on 19 July 1948 (Exhibit A).

It must be borne in mind that the price or the sum of ₱30,000 payable in eight quarterly installments at the rate of ₱3,750, the first quarter to begin 15 July 1948, is not only for the exclusive right of the appellant corporation to publish or cause to be published the manuscript to be written by the appellee on his commentaries of the Revised Penal Code of the Philippines, as amended, until 15 July 1948, but also for the liquidated balance due the appellee as his share in the sale of the reprinted copies of the first edition of his book as per contract between both parties dated 21 May 1946, and for his liquidated share in the sale of another 1,500 reprinted copies in 1948 of said book then in the press. The first installment of ₱3,750 was due on 15 October 1948. The appellant breached the contract when it paid only the sum of ₱1,000 on 31 July and another of the same amount on 10 September 1948, thereby leaving an unpaid balance of ₱1,750. That breach of the contract entitled the appellee to the payment of the rest of the installments by the appellant whether there was a judicial or extrajudicial demand as agreed upon, and the appellee could then take charge of the publication of the book and, if it had already been published, he could take over the sale and distribution of the printed books without any right on the part of the appellant to participate in its proceeds (paragraph 4, Exhibit A). It is only the acceptance by the appellee of the sum of ₱2,000 paid by the appellant on 10 November 1948 (Exhibits C, C–1, 2–B) that prevented the appellee from enforcing the stipulation in the contract already referred to, to wit: that "the rest of the install-

ments shall be deemed due and payable, whether there is judicial or extrajudicial demand made by the PARTY OF THE FIRST PART" (appellee). The payment of ₱2,000 made on 10 November 1948 accepted by the appellee completed the payment of the first installment due on 15 October 1948 with an excess of ₱250 credited to the second quarterly installment due on 15 January 1949. But, in the opinion of this Court, the delay in the payment of the first quarterly installment may not amount to a breach of contract to justify the enforcement of the stipulation set forth in paragraph 4 of the contract. The appellant justifies its refusal to complete the payment of the second quarterly installment because of the failure of the appellee to deliver the manuscript on or before 31 December 1948. But the evidence shows that on 16 December 1948 the appellee wrote a letter advising the appellant that—

> The manuscript of my Commentaries on the Revised Penal Code, subject matter of our Contract executed on the 19th of July this year, is now at your disposal. It is ready to go to the printer should you desire to publish the same next month. I am keeping the manuscript in the office because I am afraid that it may be copied by others, spoiled or lost in your possession. Besides, I desire to add new decisions of the Supreme Court that may be published from time to time before the manuscript is actually sent to the printer. Should you insist in keeping the manuscript, make me know and I shall deliver it to you. (Exhibit D.)

Although the appellant's President denies having received the letter, yet the trial court found that such letter was written and delivered to the appellant, a finding supported by a preponderance of evidence. The appellant also denies having received the original of a letter dated 27 April 1949 (Exhibit E) where reference to the previous letter of 16 December 1948 was made and demand for payment of installments due and unpaid was also made. However, the appellant corporation admits having received the original of the letters dated 15 August 1949 (Exhibit F) and 6 June 1949 (Exhibit G). In the first letter the appellee reminded the appellant corporation of its promise to settle the quarterly installments due on 15 April and 15 July and the unpaid balance of the second installment due on 15 January, and in the second, the appellee reminded the appellant of its due and unpaid quarterly installments, and warned that in view of the apparent inability of the appellant corporation to fulfill its part of the contract he would consider it rescinded and would publish the revised edition next month (July) at his expense.

The appellant's contention and claim that it did not pay the balance of ₱500 due on 15 January 1949, because the appellee failed to deliver the manuscript on or before 31

December 1948 cannot be true. The appellant would have answered the two letters it received from the appellee and stated that its refusal to pay the unpaid balance of the second installment was due to the failure of the appellee to deliver the manuscript on or before 31 December 1948, and that for that reason it was no longer under obligation to pay the unpaid balance of the second installment and the subsequent installments. Yet the appellant never answered the two letters.

Delivery of the manuscript does not necessarily mean physical or material delivery thereof. In his latter of 16 December 1948 (Exhibit D) the appellee advised the appellant that the manuscript was then at its disposal, ready to go to the printer should the appellant desire to publish it next month; that he was keeping the manuscript in his office, because he was afraid that it might be copied by others, spoiled or lost in its possession; and that it was his desire to add new decisions of the Supreme Court that might be published from time to time before the manuscript was actually sent to the printer, but that if the appellant would insist on having the manuscript, it should let him know, because he would deliver it. This constitutes delivery of the manuscript. The fact that inspite of the receipt of that letter by the appellant, as found by the trial court, the appellant did not insist on the delivery of the manuscript on or before 31 December 1948, and the further fact that on 24 December 1948 after the receipt of that letter the appellant made another payment of ₱1,000 was a clear indication that it accepted the appellee's suggestion because it was not then ready to print the manuscript.

As Manresa says:

> La jurisprudencia se ha encargado de establecer la armonía entre el nuevo principio exageradamente espiritualista y el sentido que se ha de dar a la tradición o entrega de la cosa. Lo que el vendedor está obligado a realizar, según la jurisprudencia, es el traspaso de la cosa vendida al disfrute (*jouissance*) y posesión del comprador; no a su poder (*puissance*), porque en poder del comprador, en el sentido de pertenecer a su patrimonio jurídico, estaba ya la cosa vendida desde el momento en que medió el consentimiento.
>
> Es decir, que aunque la transmisión de la propiedad se había ya operado desde la perfección del contrato, como quiera que el comprador no podría obtener los efectos útiles de éste si la cosa permaneciese perpetuamente a la disposición, al alcance del vendedor y no al alcance y a la disposición material del comprador es menester poner la cosa en esta situación de mero hecho para que el adquirente esté en posibilidad de ejercer sus facultades dominicales, que no dependen ciertamente, en cuanto a su integridad, de ese traspaso material, puesto que nacieron desde que se prestó el consentimiento; pero que necesitan de esa situación *de hecho* en la cosa. Hemos repetido lo de la situación de hecho o de mero hecho para, evitando toda confusión, hacer notar una vez más que no se trata con la entrega de la cosa, a la manera como la entiende la juris-

prudencia francesa, de ningún cambio en la situación jurídica de la cosa, ya que ésta antes y después de la entrega pertenecía al patrimonio del comprador por haberse transmitido el dominio de la misma en virtud del solo consentimiento.

* * * * * * *

Por lo tanto, la entrega de la cosa, de cualquiera de los modos que enumeran los artículos que comentamos y que seguidamente explicaremos, significa que la transmisión de la propiedad se ha verificado del vendedor al comprador. (Comentarios al Código Civil Español, Tomo X, paginas 121–122, 4.a edición.)

Castán on this point says:

Puede, pues, ser definida la entrega en nuestro Derecho como el transferimiento de la posesión jurídica de la cosa, que hace adquirir su propiedad o el derecho real por el comprador. El artículo 1.462 del Código quiera dar idea de ella diciendo que "se entenderá entregada la cosa vendida cuando se ponga en poder y posesión del comprador". (Derecho Civil Español, Común y Foral, Tomo 4, pagína 67, 8.a edición.)

The resolution of a contract because of the breach thereof by one of the parties to it does not preclude an award of damages. And there is more reason for such award when it is stipulated.

The motion for reconsideration is denied.

Parás, C. J., Montemayor, Reyes, A., Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.,* concur.

Motion denied.

[No. L-11567. July 17. 1958]

ARSENIO FERRERIA, ET AL., petitioners and appellees, *vs.* MANUELA IBARRA VDA. DE GONZALES, ET AL., respondents and appellants.

1. SUBSTITUTION OF PARTY; SUBSTITUTION MUST BE VALID IN ORDER THAT COURT MAY ACQUIRE JURISDICTION OVER PARTY SUBSTITUTED.—In the present case, there had been no court order for the legal representative of the deceased to appear, nor had any such legal representative ever appeared in court to be substituted for the deceased; neither had the complainant ever procured the appointment of such legal representative of the deceased, nor had the heirs of the deceased, including appellant, ever asked to be allowed to be substituted for the deceased. As a result, no valid substitution was effected, consequently, the court never acquired jurisdiction over appellant for the purpose of making her a party to the case and making the decision binding upon her, either personally or as legal representative of the estate of her deceased mother.

2. COURT OF AGRARIAN RELATIONS; EXCLUSIVE JURISDICTION OVER TENANCY CASES; DEATH OF LANDLORD, EFFECT OF.—Disputes arising between landlord and tenant fall within the exclusive jurisdiction of the Court of Agrarian Relations. The fact that the landlord dies does not mean that the relation of landlord and tenant ends, because the estate continues to be the landlord.

REVIEW by Certiorari of an order of the Court of Agrarian Relations.

The facts are stated in the opinion of the Court.

F. M. Ejército for respondents and appellants.

Pedro R. Mañago for petitioner and appellee Arsenio Ferreria.

MONTEMAYOR, *J.:*

This is quite an old case, about a landlord and some of her tenants, which had its origin in a complaint filed by some of said tenants way back on February 3, 1947. The thing involved is about twenty cavans of palay. But under the present law, the appeal from a resolution of the Court of Agrarian Relations had to come directly to this Tribunal.

Manuela Ibarra Vda. de Gonzales presumably owned a parcel of land in Umingan, Pangasinan, cultivated by tenants. After the sharing of the crop for the agricultural year 1946–47 by her overseer, Luis Tecson, a number of the tenants, dissatisfied with their share on the basis of 60–40, claiming that they were entitled to 70% of said crop, filed complaints with the Tenancy Division of the Department of Justice. It would appear, however, that only tenant Arsenio Ferreria continued with his complaint, his co-complainants having withdrawn theirs. Ferreria's complaint was filed not only against Manuela Ibarra,

but also against the overseer, Luis Tecson. During the pendency of the case, Manuela died on November 27, 1948. Counsel for Ferreria filed a petition for substitution which was granted by order of the Department of Justice, dated December 9, 1948, which also set the case of hearing on January 6, 1949.

The said order of December 9, 1948, at the bottom thereof, made mention of Manolita Gonzales as residing at 272 Buendia St., Rizal City. The return of service of said order supposedly by the Sheriff (Annex C), shows that a copy of the same was left with one Aurora Gonzales, niece of Manolita Gonzales, apparently living in said address. It may be stated in passing that Manolita Gonzales claims that she did not own the land in question; that her only right and interest in it was as an heir, being one of the five surviving children of Manuela.

The scheduled hearing was held in the absence of Manolita Gonzales. Decision was finally rendered in the case on May 18, 1951. On May 23, 1952, the Court of Industrial Relations, then in charge of tenancy cases, issued a writ of execution of the judgment, the dispositive part of said decision in part reading as follows:

"IN VIEW OF ALL THE FOREGOING, the respondent landlord and/or her duly authorized representative is/are hereby ordered to deliver to the petitioner-tenant Arsenio C. Ferreria the balance of 20.6 cavanes of palay equivalent to 10% of his share to complete his 70% participation in the crop harvested for the agricultural year 1946–1947, or its money value at the Naric price of palay in the locality, within 15 days from receipt of this decision."

Another portion of the dispositive part reproduced, states that the complaints of the other complainants were dismissed.

On receipt of a copy of this writ of execution, Luis Tecson and Manolita Gonzales each filed a petition to set aside said writ. Luis claimed that it was true that he was an overseer of Manuela Ibarra, but that upon her death on November 27, 1948, the possession that he held of the land as overseer passed on to the administrator of the estate; that thereafter, he no longer had anything to do with said property, and that in the distribution of the crop for 1946–1947, the share of Manuela was duly delivered by him to her, and that any claim by Ferreria should be filed with and against her estate. On her part, Manolita claimed that she was surprised to receive a copy of the writ of execution because she was never made a party to the case and had never been served any process or notice of hearing therein, and that an examination of the record of the case would show that from the inception of the case up to the rendering of the decision, her name

was never mentioned by any of the parties, and that it was a surprise to find her name included in the title of the decision as one of the defendants, although the body of said decision never mentioned her name; that although she was one of the five heirs of Manuela Ibarra, she, Manolita, was not the actual owner of the estate which was then under probate proceedings in the Court of First Instance of Rizal; and that if Ferreria had any claim against the estate, he should file the same to be passed upon by the probate court. Both Luis and Manolita asked that the writ of execution be set aside.

It would seem that nothing was done about the petitions, and after the creation of the Court of Agrarian Relations, Judge Tomas P. Panganiban finally took action on the same, and by order of August 23, 1956, overruled the same, holding that under the law creating the Court of Agrarian Relations, said court had exclusive and original jurisdiction to try, investigate, and settle all cases, matters and disputes arising between landlord and tenant, and that the case at bar was purely a dispute between landlord and tenant. Both petitioners Luis and Manolita asked for reconsideration of the order, Manolita emphasizing her contention that she was deprived of her day in court due to the failure of plaintiff Ferreria to make the proper substitution, citing Rule 3, Section 17, above-reproduced. In a resolution dated October 29, 1956, the Agrarian Court held that Manuela Ibarra had been duly substituted by Manolita Gonzales, and that service of the order of substitution was duly served upon her. We reproduce the pertinent portion of the resolution:

"Anent the first ground, it appears that respondent Manuela Ibarra Vda. de Gonzales was duly substituted upon her death by Manolita Gonzales Vda. de Carungcong in a petition filed by counsel for the petitioners on December 9, 1948, and granted by the representative of the former Tenancy Division, now Court of Agrarian Relations, on the same date. A copy of the order granting the petition for substitution was sent to Manolita Gonzales Vda. de Carungcong, through the Chief of Police of Rizal City, by registered mail on December 9, 1948. Therefore, respondent Manolita was duly notified of the hearing set on January 6, January 26, March 26, April 21, May 7, June 7, and July 1, all in the year 1949, but these hearings had to be cancelled due to the absence of the respondents on January 6, 1949 and their several motions for postponement on the subsequent dates. On July 2, 1949, the hearing proceeded in the absence of the respondents during which petitioners presented their evidence. Notwithstanding several chances given to the respondents to present their evidence on August 5, 1949 and September 20, 1949, respondents persistently failed to appear. However, on February 3, 1950, counsel for the respondents cross examined one witness of the petitioners and finally, on March 4, 1950 respondents presented their evidence, with the exception of Manolita Gonzales de Carungcong (who) never appeared."

The Agrarian Court further said that if Manolita did not care to appear before the former Tenancy Division, she cannot now complain that she was deprived of her day in court; and that as to Luis Tecson, since the decision orders "the respondent landlord and/or her duly authorized representative" to deliver to the petitioner Ferreria the balance of 20.6 cavans of palay, Luis Tecson, as overseer and duly authorized representative of the landlord, must comply with the decision of the court, and that his counsel's contention that the property involved was within the jurisdiction of the probate court was incorrect, for the reason that the palay ordered to be delivered, properly belonged to Ferreria as his share in the crop and, therefore, it was not part of the estate under administration, neither was it a claim against the estate.

Both Manolita and Luis have filed the present petition to review the order of August 23, 1956, denying the petitions to lift the writ of execution and the order of October 29, 1956, denying the petition for reconsideration. The petition was given due course and appellee Ferreria was required to answer, which he did. Thereafter, both parties filed memoranda in support of their contentions.

The first question to be determined is whether or not there was a valid notification or service of the order granting the petition for substitution on Manolita Gonzales. It will be remembered that a copy of the order was never served on Manolita personally, but upon her niece, Aurora Gonzales. In other words, it was substituted service. Section 8, Rule 7, regarding the service of summons, provides as follows:

"SEC. 8. *Substituted service.*—If the defendant cannot be promptly served as required in the preceding section, service may be effected by leaving copies of the summons at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof or upon the defendant by registered mail."

As to the service of court orders, we have Sections 3 and 4 of Rule 27, which read as follows:

"SEC. 3. *Modes of service.*—Service of pleadings, motions, notices, orders, judgments and other papers shall be made either personally or by mail."

"SEC. 4. *Personal service.*—Service of the papers may be made by delivering personally a copy to the party or his attorney, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or attorney's residence, if known, with a person of sufficient discretion to receive the same."

We find that under none of these above-quoted provisions of the Rules of Court had Manolita been duly served with the order of substitution. According to her, at the time, she was not living at 272 Buendia St., where copy of the order was left with Aurora who lived in that place. The rules require that the copy should be left at the residence or office of the one served, or with someone living therein. Furthermore, Manolita claims that she never received the copy left with her niece and that they were not living together.

The other question is whether or not there had been a valid substitution. Rule 3, Section 17, of the Rules of Court provides as follows:

> SEC. 17. *Death-of party.*—After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the legal respresentative fails to appear within said time, the court may order the opposing party to procure the appointment of a legal representative of the deceased within a time to be specified by the court, and the representative shall immediately appear for and on behalf of the interest of the deceased. The court charges involved in procuring such appointment, if defrayed by the opposing party, may be recovered as costs. The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian *ad litem* for the minor heirs."

In the present case, there is no question that there had been no court order for the legal representative of Manuela Ibarra to appear, nor had any such legal representatives ever appeared in court to be substituted for the deceased; neither had complainant Ferreria ever procured the appointment of such legal representative of the deceased, nor had the heirs of the deceased, including appellant, (Manolita,) ever asked to be allowed to be substituted for the deceased Manuela. As a result, the hearings were held without the presence of Manolita Gonzales. True, Atty. Emilio Fernandez, it seems, originally represented Manuela and apparently, Luis Tecson, and continued with their representation, but Manolita now argues that with the death of Manuela Ibarra, his relationship as counsel for Manuela ceased, and what is more, he was never authorized to appear for Manolita Gonzales. Inasmuch as Manolita Gonzales was never validly served a copy of the order granting the substitution and that, furthermore, a valid substitution was never effected, consequently, the court never acquired jurisdiction over Manolita Gonzales for the purpose of making her a party to the case and making the decision

binding upon her, either personally or as legal representative of the estate of her mother Manuela.

However, we agree with the Agrarian Court in so far as it holds that it has exclusive jurisdiction over cases involving tenancy. The fact that the landlord dies does not mean that the relation of landlord and tenant ends, because the estate continues to be the landlord and if, as in this case, it is found that during the lifetime of Manuela Ibarra, the sharing of the crop for the agricultural year 1946–1947 should have been on the basis of 70–30, instead of 60–40, and therefore, she owed Ferreria 10% of said crop, then said obligation remained a charge on her estate after she died and there was no necessity for the tenant to file a claim for this 10% with the probate court in charge of the estate.

As to Luis Tecson, we agree with him in his contention that in the sharing of the crop for the agricultural year 1946–1947, he acted merely as an overseer and that he gave the share corresponding to the owner to Manuela, and that since then, specially after her death, he had nothing more to do with the land. It is clear that the obligation to deliver to tenant Ferreria 10% of that crop of the agricultural year, should it be later found that the basis should have been 70-30, instead of 60-40, rests with the estate of Manuela through the administrator and not with Luis Tecson, whose relation as overseer had long ceased.

In connection with the basis of sharing of the crop for the agricultural year 1946-1947, Manolita in her pleadings claims that her mother furnished the work animals, seeds, and other facilities used in the cultivation and that consequently, the share should have been on the 50-50 basis. Ferreria claims the contrary. These conflicting claims should be finally determined by the Agrarian Court.

In view of the foregoing, we hereby set aside not only the writ of execution, the resolution of the Agrarian Court and its order denying the motion for reconsideration of the same, now sought to be reviewed, but also the original decision of the Tenancy Division for lack of jurisdiction. The case is hereby ordered remanded to the Court of Agrarian Relations for further proceedings, in which proceedings, the Agrarian Court may bear in mind and consider the rulings and holdings contained in this decision, specially with regards to substitution of parties and the liability of Luis Tecson in relation to any palay which Ferreria may be found to be entitled to. No costs.

Parás, C. J., Bengzon, Reyes, A., Bautista Angelo, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.*, concur.

Writ, resolution, order and decision set aside.

[No. L-11786. September 26, 1958]

HARRY LYONS, INC., plaintiff and appellant, *vs.* THE UNITED STATES OF AMERICA (651 United States Naval Supply Depot, U.S. Navy, Philippines), defendant and appellee.

1. SOVEREIGN STATE; WHEN STATE MAY BE SUED WITHOUT ITS CONSENT.—As a rule, a sovereign state cannot be sued in its own courts, or in any other, without its consent. However, where, as in the instant case, a sovereign state entered into a contract with a private person the state can be sued upon the theory that it has descended to the level of an individual from which it can be implied that it has given its consent to be sued under the contract.

2. ID.; ID.; EXHAUSTION OF ADMINISTRATIVE REMEDIES; CASE AT BAR.—The contract entered into between the United States Government and appellant for stevedoring and miscellaneous labor services lays down the procedure to be followed by the appellant should it desire to obtain a remedy under the contract. Its remedy is to file its claim, not with the court, but with the Contracting Officer who is empowered to act and render a decision. If dissatisfied with his decision, plaintiff may appeal to the Secretary of the Navy where he would be "afforded an opportunity to be heard and to offer evidence in support of its appeal", and the decision of the Secretary shall be final and conclusive "unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessary to imply bad faith." Hence, it is only after the claim has been decided on appeal by the Secretary that plaintiff can resort to a court of competent jurisdiction. It appearing *in the complaint* that appellant has not complied with the aforesaid procedure, or, stated differently, it has failed to first exhaust its administrative remedies against said Government, the lower court acted properly in dismissing the case.

APPEAL from an order of the Court of First Instance of Manila. Reyes, *J.*

The facts are stated in the opinion of the Court.

Zosimo Rivas & *Arturo A. Aláfriz* for the plaintiff and appellant.

Bonifacio S. Gutiérrez for the defendant and appellee.

BAUTISTA ANGELO, *J.:*

Plaintiff brought this action before the Court of First Instance of Manila to collect several sums of money arising from a contract entered into between plaintiff and defendant.

Defendant filed a motion to dismiss on the ground that the court has no jurisdiction over defendant and over the subject matter of the action. The court sustained this motion on the grounds that (a) the court lacks jurisdiction over defendant, it being a sovereign state which cannot be sued without its consent; and (b) plaintiff failed to exhaust the administrative remedies provided for in

Article XXI of the contract. Plaintiff took the case on appeal directly to this Court.

It appears that plaintiff and defendant entered into a contract for stevedoring service at the U.S. Naval Base, Subic Bay, Philippines, the contract to terminate on June 30, 1956. This contract was entered into pursuant to the provisions of Section 2(c) (1) of the Armed Services Procurement Act of 1947 of the United States of America (Public Law 413, 80th Congress). It is undisputed that the contract was entered into between plaintiff and the Government of the United States of America.

"It is an established principle of jurisprudence in all civilized nations, resting on reasons of public policy, because of the inconvenience and danger which would follow from any different rule, that the sovereign cannot be sued in its own courts, or in any other, without its consent and permission. Accordingly, other than those instances in which the United States has consented to be sued, the United States is immune from suit upon claims against it or debts due by it. * * * When consent to suit is not forthcoming, the only remedy of the party injured by an act of the United States is by an appeal to Congress" (54 Am. Jur., Section 127, pp. 633–635).

"In the case of Syquia v. Lopez, et al., 47 O. G., 665, where an action was brought against U.S. Army officers not only for the recovery of possession of certain apartments occupied by military personnel under a contract of lease, but also to collect back rents and rents at increased rates including damages, we held: * * * It is therefore, evident that the claim and judgment will be a charge against and a financial liability to the U.S. Government because the defendants had undoubtedly acted in their official capacities as agents of said Government, * * *. Consequently, the present suit should be regarded as an action against the United States Government. * * * Therefore, the suit cannot be entertained by the trial court for lack of jurisdiction." (Johnson v. General Turner, et al., G. R. No. L–6118, April 26, 1954)

It is however contended that when a sovereign state enters into a contract with a private person the state can be sued upon the theory that it has descended to the level of an individual from which it can be implied that it has given its consent to be sued under the contract. Thus, appellant cites the case of Santos v. Santos, 48 O. G., 4815, promulgated May 26, 1952, wherein this Court made the following pronouncement:

"* * * if, where and when the state or its government enters into a contract, through its officers or agents, in furtherance of a legitimate aim and purpose and pursuant to constitutional legislative authority, whereby mutual or reciprocal benefits accrue and rights

and obligations arise therefrom, and if the law granting the authority to enter into such contract does not provide for or name the officer against whom action may be brought in the event of a breach thereof, the state itself may be sued even without its consent, because by entering into a contract the sovereign state has descended to the level of the citizen and its consent to be sued is implied from the very act of entering into such contract. If the dignity of the state, the sacredness of the institution, the respect for the government are to be preserved and the dragging of its name in a suit to be prevented, the legislative department should name the officer or agent against whom the action may be brought in the event of breach of the contract entered into under its name and authority. And the omission or failure of the legislative department to do so is no obstacle or impediment for an individual or citizen, who is aggrieved by the breach of the contract, to bring an action against the state itself for the reasons already adverted to, to wit: the descent of the sovereign state to the level of the individual or citizen with whom it entered into a contract and its consent to be sued implied from the act of entering into such contract."

We agree to the above contention, and considering that the United States Government, through its agency at Subic Bay, entered into a contract with appellant for stevedoring and miscellaneous labor services within the Subic Bay area, a U.S. Navy Reservation, it is evident that it can bring an action before our courts for any contractual liability that that political entity may assume under the contract. The trial court, therefore, has jurisdiction to entertain this case in so far as appellee is concerned.

But assuming that the trial court has jurisdiction to entertain this case, as set out above, did said court err in dismissing the complaint on the ground that plaintiff has failed to comply with the condition prescribed in the contract before an action could be taken in court against the U.S. Government?

Article XXI of the contract provides:

"ARTICLE XXI. *Disputes.*

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Contracting Officer, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Contractor. Within 30 days from the date of receipt of such copy, the Contractor may appeal by mailing or otherwise furnishing to the Contracting Officer a written appeal addressed to the Secretary, and the decision of the Secretary or his duly authorized representative for the hearing of such appeals, shall, unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessary to imply bad faith, be final and conclusive, provided that, if no such appeal is taken, the decision of the Contracting Officer shall be final and conclusive. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Contractor shall

proceed diligently with the performance of the contract and in accordance with the Contracting Officer's decision."

The foregoing lays down the procedure to be followed by plaintiff should it desire to obtain a remedy under the contract. Its remedy is to file its claim, not with the court, but with the Contracting Officer who is empowered to act and render a decision. If dissatisfied with his decision, plaintiff may appeal to the Secretary of the Navy where he would be "afforded an opportunity to be heard and to offer evidence in support of its appeal", and the decision of the Secretary shall be final and conclusive "unless determined by a court of competent jurisdiction to have been fraudulent, arbitrary, capricious, or so grossly erroneous as necessary to imply bad faith." Hence, it is only after the claim has been decided on appeal by the Secretary that plaintiff can resort to a court of competent jurisdiction.

"As this Court well said: 'If plaintiffs were aggrieved by the action or decision of the Director of Lands, their remedy was to appeal to the Secretary of Agriculture and Commerce. But it does not appear that they have done so. It does not even appear that they have pursued their protest to its conclusion in the Bureau of Lands itself. Having failed to exhaust their remedy in the administrative branch of the government, plaintiffs cannot now seek relief in the courts of justice.' (Eloy Miguel, et al. v. Anacleta M. Vda. de Reyes, et al., G. R. No. L–4851)." (Heirs of Gregorio Lachica, et al., v. Fermin Ducusin, et al., G. R. No. L–11373, promulgated November 29, 1957)

"In order to maintain a suit against the United States, plaintiff must show that the United States has consented to suit and must bring himself within the terms of the consent, and it is also generally held that he must first exhaust his administrative remedies." (91 C.J.S., p. 421)

It appearing *in the complaint* that appellant has not complied with the procedure laid down in Article XXI of the contract regarding the prosecution of its claim against the United States Government, or stated differently, it has failed to first exhaust its administrative remedies against said Government, the lower court acted properly in dismissing this case.

WHEREFORE, the order appealed from is affirmed, with costs.

Parás, C. J., Bengzon, Padilla, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Montemayor, Reyes, A., and *Concepción, JJ.,* in the result.

Order affirmed.

[No. L-10289. July 31, 1957]

BRUNA PANTALEON, ET AL., petitioners, *vs.* GREGORIA CATOPO SANTOS, ET AL., respondents

1. TAXATION; SALE OF LAND, NON-PAYMENT OF TAXES; EFFECT ON REGISTERED BUT UNDECLARED OWNER; PROCEEDING "IN PERSONAM".—The right of a registered but undeclared owner of one-half of the property cannot be affected by the administrative or tax delinquency proceeding against the registered owner of the other half of the property, who is the declared owner of the whole thereof. The provisions of sections 28 to 41 of Commonwealth Act No. 470 for the sale of the land for non-payment of taxes establish a proceeding not *in rem* but *in personam* as the tax is not a charge on the land alone, and only the particular interest of the person to whom the land is sold.
2. ID.; SALE OF REAL ESTATE FOR DELINQUENCY; IN THE PROVINCES; "IN PERSONAM".—Under the provisions of the Provincial Assessment Law as they are, the proceedings for the sale of real estate for delinquency in the provinces must be held to be *in personam*.

APPEAL by certiorari from a decision of the Court of Appeals.

The facts are stated in the opinion of the Court.

Nicanor Nicolás for the petitioners Provincial Treasurer and Municipal Treasurer of Teresa, Rizal.

Esteban P. García for petitioners Bruna Pantaleón, et al.

Salonga, Ordoñez, Gonzales & Associates for respondents.

LABRADOR, *J.*:

Appeal by certiorari from a decision of the Court of Appeals declaring the tax title of defendants-appellees to the property subject of the action null and void, and ordering them to pay plaintiffs-appellants the sum of ₱300 as attorney's fees.

The facts material to the case, as found by the Court of Appeals, are as follows:

"From the evidence adduced by the plaintiffs, it appears that the two parcels of land involved herein were registered under the Land Registration Act, in the names of the brothers Miguel Pantaleon and Florentina Pantaleon, as co-owners, up to the institution of this action. Florentina Pantaleon was the deceased parent of the plaintiffs. In 1918, Miguel Pantaleon executed in favor of the spouses Francisco Manang Cruz and Bruna Pantaleon a deed of sale of the 'derecho, titulo y participacion que el con-dueño inscrito Miguel Pantaleon tiene sobre el terreno desecrito en este ceretificado de tiulo' (referring to O.C.T. Nos. 1380 and 1484). The other halves of the properties covered by these titles which pertained to Florentina Pantaleon and not disposed of by Miguel, were in the possession of the plaintiffs up to the filing of this action. It appears that those halves were formerly in the possession of defendants Bruna Pantaleon, Demetria M. Cruz and Leonida M. Cruz, but in 1945, the plaintiffs were restored to the possession thereof upon demand from said Bruna, Demetria and Leonida, in consideration of the renun-

ciation by the plaintiffs of their right to recover from them (defendants) the value of the produce of the undisposed portions and of the obligation undertaken by said defendants to pay all real property taxes thereon. This undertaking, however, was not complied with by the defendants and, in 1951, the two parcels of land, covered by O.C.T. Nos. 1380 and 1484, were sold in their entirety by the defendant Provincial Treasurer of Rizal, for alleged non-payment of ₱57.57, the taxes due thereon, and were bought by the defendant spouses Teodulo Carigma and Demetria Cruz for ₱540, they being the highest bidders at the public auction sale. One year thereafter, the vendees were given the final deeds of sale (Exhibit 8) which were annotated on the dorsum of the certificates of title. Plaintiffs allege that all these proceedings were not known to them and when later on they learned about them, they hurriedly engaged a lawyer to bring this action."

In the complaint plaintiffs allege that their undivided share in the two lots subject of the action was sold for non-payment of land taxes thereon through connivance between the defendants; that their share in the property was sold at public auction without the necessary public notice and without notice to them of any tax delinquency thereon, notwithstanding the fact that they were in actual physical occupation of the land before the sale. They, therefore, pray that the sale of their share in the lands in favor of the defendants be declared null and void and that they be paid damages. In their answer the defendants deny specifically most of the material allegations of the complaint and allege that the lands were sold at public auction after due notice of the delinquency, in accordance with the required procedure established by law; that plaintiffs do not have any right to the property as they have never claimed such right for the last 34 years and since 1918 when the properties were sold to Francisco Manang Cruz and Bruna Pantaleon. As the provincial treasurer of Rizal and the municipal treasurer of Teresa, Rizal were included as defendants, they also presented their answer denying the alleged failure to comply with the procedure established by law for the sale of delinquent properties. As special defenses they allege that the tax lien attached to the realty to whomsoever the land is sold or transferred, and the tax liability falls on them.

The Court of First Instance of Rizal, after trial, dismissed the action, holding that as the plaintiffs had not paid the taxes due, in spite of the fact that they were in possession of the property as co-owners since 1945, the remedy prayed for could not be granted them because they had slept on their rights. Against this decision, the case was appealed to the Court of Appeals, which reversed the judgment appealed from and rendered the decision already pointed out above.

In this Court petitioners make seven assignments of error. It is not, however, necessary to consider all of

them as the main contention in all is that the respondents are guilty of estoppel by laches because they have failed to declare the property in their names for a period of 35 years; that in spite of the fact that they have been in possession since 1941 up to 1952 they have not paid a centavo of the taxes due thereon. It is furthermore claimed that no notice of the delinquency of the tax of the property was made because the property was declared in the name of Francisco M. Cruz and not their name, it being impossible that a person who is not the declared owner of the property be notified of the delinquency.

There is no question that the whole land was assessed in the name of Francisco M. Cruz from the time he bought the one-half share of Miguel Pantaleon; that the delinquency for taxes was on the two parcels of land in question, designated as lots Nos. 3577 and 3579 of the cadastral survey of Antipolo, Rizal; that the delinquency was for seven years, from 1944 to 1951; that the heirs of the registered owner of one-half undivided share in the properties, Florentina Pantaleon, are not included as declared owners of the property, the declared owner being Francisco M. Cruz alone; that Francisco M. Cruz was the only one notified of the proceedings for the sale of the property on the ground of delinquency in the payment of real estate taxes, and the heirs of Florentina Pantaleon were not notified; and that the petitioners Bruna Pantaleon, et al., were the purchasers of the said lots at the sale at public auction conducted by the officials of the municipality.

With the above facts in mind, the question presented to Us for determination is whether or not the plaintiffs, respondents herein, lost their title and interest in said undivided share because of the administrative proceedings for the sale of said lands in their entirety to the petitioners-appellants herein. The Court of Appeals resolved this question in part in the following manner:

"Appellants argue that in the supposition that the sale at public auction was regular, still the defendants-vendees did not acquire any right at said sale. The argument is not without merits. The right of Francisco M. Cruz over the land described in O.C.T. Nos. 1380 and 1484 was limited to the rights, title and participation of the registered co-owner Miguel Pantaleon. Only one-half of said properties corresponded to said Miguel Pantaleon. In the public auction, however, both parcels of land were sold in their entirety, although the certificates of sale stated that the vendee acquired only the rights and interests of Francisco M. Cruz. In other words, if Francisco M. Cruz became delinquent in the payment of real property taxes on his portion acquired from Miguel Pantaleon, then only his right can be sold to satisfy the delinquency. The interest of the appellants over the other half not disposed of in the deed in favor of Francisco M. Cruz cannot be prejudiced or adversely affected by the act of said Cruz (section 10, Rule 123, Rules of Court), and the

title in a tax sale being a mere derivative one, the purchasers acquire only the apparent interest, whatever it is, of the tax delinquent (Govt. of the P. I. *vs.* Adriano, 41 Phil., 112). Defendants-vendees claim good faith and alleged that they bought an apparently good title without notice of anything calculated to impair it. It has been held, however, 'that a purchaser of delinquent property at a tax sale, is subject to the rule of *caveat emptor* and shall suffer all defect of prior title * * *'. There is no warranty by the State of the title to a land sold at a tax sale (Ramirez *vs.* Ilagan, *supra*). In the instant case, the annotation on the reverse side of the O.C.T. Nos. 1380 and 1484 revealed that the rights of Francisco M. Cruz over the properties in question were not at all absolute in character. Therefore, the sale conducted by the defendant Provincial Treasurer did not convey the whole title to the defendants-vendees, because the alleged delinquent owners did not own all the properties sold at public auction. The purchaser could not claim any better title than its predecessors (Government *vs.* Adriano, *supra*)."

It is to be noted that Florentina Pantaleon, mother of the plaintiffs, is the registered owner of an undivided one-half share of the parcels of land in question and plaintiffs succeeded her as owners thereof. Francisco M. Cruz, under whose name both parcels of land were declared in their entirety, had acquired only the undivided one-half share of Miguel Pantaleon, and this limited nature of his right appears at the back of the certificates of title covering the said lands. Francisco M. Cruz is not, therefore, the owner of the other undivided one-half share, originally belonging to Florentina Pantaleon.

The question directly presented by the facts, therefore, is: Are the rights of a registered but undeclared owner of one-half of the property, affected by the administrative or tax delinquency proceeding against the registered owner of the other half of the property, who is the declared owner of the whole? The provisions of the Provincial Assessment Law in force at the time of the promulgation of the decision in Government of the P. I. *vs.* Adriano, 41 Phil. 112 (1920) are still in force. These provisions are now Sections 28 to 41 of Commonwealth Act No. 470 (June 16, 1939). In the case of Government of the P. I. *vs.* Adriano, *supra,* we held that the above provisions of the law for the sale of the land for non-payment of taxes establish a proceeding *in personam,* as the tax is not a charge on the land alone, and only the particular interest of the person to whom the land is assessed is sold. Thus it was said:

"The exact phraseology of the particular statute would seem to determine the doctrine applicable in each jurisdiction. The Philippine law on the subject of taxation, when this tax sale occurred, was found in the Municipal Code, Act No. 82 (sections 74-83), as amended by Act No. 1139. According to these provisions, in case of default in the payment of land taxes, the personal property of the delinquent was first seized. Taxes and penalties were thereafter enforcible against the realty and, if necessary, it could be sold to satisfy the

public taxes assessed against it. In case the taxpayer did not redeem the land sold within one year from the date of the sale, the provincial treasurer, as grantor, executed a deed conveying the land to the purchaser free from all liens of any kind whatsoever.

"It is thus seen that there was no provision in the local law, such as is found in Iowa and other states, vesting in the purchaser 'all the title of the former owner as well as of the State and County.' (See Hefner *vs.* Northwestern Mut. L. Ins. Co. [1887], 123 U. S., 747.) It is further seen that proceedings in the Philippines for the sale of land for the nonpayment of taxes were *in personam.* (Valencia vs. Jimenez and Fuster [1908], 11 Phil., 492.) The tax was not a charge upon the land alone. The authorities were first required to hunt up the owner and to make the tax out of his personal property. Only the particular interest or title of the person to whom the land is assessed was sold. As a stream cannot rise higher than its source, so the purchaser could not claim any better title than his predecessor." (Government of the P. I. *vs.* Adriano, 41 Phil. 118–119).

That proceedings for the sale of delinquent real estate under the Provincial Assessment Law are *in personam* can be inferred from a comparison thereof with the corresponding provisions of the Revised Charter of the City of Manila, Republic Act No. 409. Section 56 imposes a duty upon any person acquiring real estate or constructing thereon to prepare a declaration thereof, for purposes of assessment, and the assessment then made is made "valid and binding on all persons interested." Section 57 provides that if an owner fails to make a return or declaration and the assessor is unable to discover the owner, the latter shall nevertheless list the same for taxation, and charge the tax against the true owner, if known, and if unknown against an unknown owner. Section 58 requires the assessor to list and value property not already listed and charge against the owner thereof the taxes due and past due. Section 68 provides that taxes and penalties assessed against realty shall constitute a lien thereon, superior to all others, thus:

"SEC. 68. *Tax lien.*—Taxes and penalties assessed against realty shall constitute a lien thereon, which shall be superior to all other liens, mortgage, or incumbrances of any kind whatsoever; shall be enforceable against the property whether in the possession of the delinquent or any of the tax and penalty. A lien upon real estate for taxes levied for each year shall attach on the first day of January of such year." (Republic Act No. 409.)

Section 69 provides that advertisements for the sale of real estate shall be published in a newspaper of general circulation in the city. It also provides that it is not essential for the validity of the sale at public auction that distraint of personal property of the delinquent be proceeded with, the distraint being merely cumulative. Section 71 provides that the tax deed to be issued upon the sale conveys to the purchaser so much as has been sold, "free from all liens of any kind whatsoever."

The above indicated provisions of the Revised Charter of the City of Manila are not found or included in the Provincial Assessment Law. Had it been the intention of the law to make the proceedings for the sale of delinquent real estate in the provinces *in rem*, as in the City of Manila, the above provisions, which indicate that the proceedings bind the real estate and all the persons having an interest therein, whether notified or not of the proceedings, would have been inserted in the Provincial Assessment Law. Under the provisions as they are, the proceedings for the sale of real estate for delinquency in the provinces must be held to be *in personam*.

As the proceedings in the case at bar are not proceedings *in rem* but merely *in personam*, it follows as a necessary consequence that the rights of the registered but undeclared owners were not affected by the proceedings in the sale for delinquency.

We find no merit in the claim of the defendants-petitioners that plaintiffs-respondents are guilty of estoppel by laches. Petitioners bought the property only in the year 1951, and the action of respondents was instituted in 1953 within a period of one year from the sale. Besides, the rule of *caveat emptor* applies to the purchaser at the sale. The purchasers should have gone to the registry of property to find out the real nature of the right of the declared owner, which right was the one being sold at auction, and had they done so they would have discovered that his right was only an undivided one-half share of the properties.

Having arrived at the above conclusions, it becomes unnecessary to consider the other points raised and upon which the decision of the Court of Appeals are also based. The decision appealed from is hereby affirmed, with costs against the petitioners.

Montemayor, Reyes, A., Bautista Angelo, Concepcion, Endencia, and *Félix, JJ.*, concur.

Parás, C. J.: In the result.

Decision affirmed.

[No. L-7909. January 18, 1957]

CIPRIANO E. UNSON, petitioner and appellant, *vs.* HON. ARSENIO H. LACSON, as Mayor of the City of Manila, and GENATO COMMERCIAL CORPORATION, respondents and appellees.

MUNICIPAL CORPORATIONS; ONLY POWERS GRANTED MAY BE EXERCISED; POWER TO CLOSE STREET.—Municipal corporations are mere creatures of Congress; as such, they possess, and may exercise, only such powers as Congress may deem fit to grant thereto. In the case at bar, section 18(*x*) of Republic Act No. 409 authorizes the Municipal Board of Manila, "subject to the provisions of existing laws, to provide for the laying out, *construction* and improvement * * * of streets, avenues, alleys * * * and other public places," but it says *nothing* about the closing of any such places. The significance of this silence becomes apparent when contrasted with section 2246 of the Revised Administrative Code, explicitly vesting in municipal councils or regularly organized municipalities the power to close any *municipal* road, street, alley, park or square, provided that persons prejudiced thereby are duly indemnified, and that the previous approval of the Department Head shall have been secured. The express grant of such power to the aforementioned municipalities and the absence of said grant to the City of Manila lead to no other conclusion than that the power was intended to be *withheld* from the latter.

APPEAL from a judgment of the Court of First Instance of Manila. Amparo, *J.*

The facts are stated in the opinion of the Court.

Plantilla, Unson & Limjoco for petitioner and appellant.

Assistant Fiscal Arsenio Nañawa for the respondent and appellee City Mayor of Manila.

Arturo A. Alafriz for the respondent and appellee Genato Commercial Corporation.

CONCEPCION, *J.:*

This is an action to annul a municipal ordinance and cancel a contract of lease of part of "Callejon del Carmen," in the City of Manila. Its Mayor and the Genato Commercial Corporation—hereinafter referred to as Genato, for the sake of brevity—lessor and lessee, respectively, under said contract, are the respondents herein. After due trial, the Court of First Instance of Manila rendered a decision dismissing the petition, with costs against the petitioner, who has appealed from said decision. The case is before us because the validity of a municipal ordinance is involved therein.

Petitioner, Cipriano E. Unson, is the owner of Lot No. 10, Block 2537, of the Cadastral Survey of the City of Manila, with an area of 1,537.20 square meters, more or less. It is bounded, on the North, by R. Hidalgo Street;

on the East or Northeast, by Lot No. 12, belonging to Genato, and, also, by a narrow strip of land running eastward (from 1.68 to 2.87 meters in width and from 29.90 to 28.4 meters in length), known as Lot No. 11 (of about 123.7 square meters), which the City of Manila regards as its patrimonial property; on the West, by a private property whose owner is not named in the record; and on the South or Southeast, by a strip of land, narrower than Lot 11, running from East to West (about 1.68 meters in width and 26.14 meters in length, or an area of about 45 square meters, more or less), known as Lot No. 9, which is, also, claimed by said City as its patrimonial property. Immediately South of this Lot No. 9 is the Northern half of Callejon del Carmen, which is separated from its Southern half by the Estero de San Sebastian. Several structures exist on the lot of petitioner Unson. There is a sizeable building on the Northern part, adjoining R. Hidalgo Street, and a small building—known as "Commerce Building"—on the Southern portion, which adjoins the aforesaid Lot No. 9. Unson's lot is, and for several years has been, leased to the National Government, for use by the "Mapa High School", as "Rizal Annex" thereof, which has an enrollment of over 1,500 students.

On or about September 28, 1951, the Municipal Board of Manila passed Ordinance No. 3470 withdrawing said Northern portion of Callejon del Carmen from public use, declaring it patrimonial property of the City and authorizing its lease to Genato. The ordinance provides:

"SECTION 1. Those portions of Callejon del Carmen, Quiapo, having an aggregate area of 709.27 square meters and adjacent to the premises of the Genato Commercial Corporation, are hereby withdrawn from public use.

"SEC. 2. The above piece of land described in Section 1 hereof is hereby declared as patrimonial property of the government of the City of Manila.

"SEC. 3. The lease of the aforesaid city property with an aggregate area of 709.27 square meters to Genato Commercial Corporation at a monthly rental of ₱.20 per square meter is hereby authorized.

"SEC. 4. This Ordinance shall take effect upon its approval." (Exhibit 2-A, p. 10, Folder of Exhibits.)

Upon approval of this ordinance by the City Mayor, the lease contract therein mentioned (pp. 13–21, Record on Appeal) was entered into and Genato constructed a building on said portion of Callejon del Carmen, at a distance of about 0.765 meter from the Southern boundary of said Lot No. 9. This strip of Callejon del Carmen and said Lot No. 9 thus form an open space of about 2.445 meters in width, more or less, separating said building constructed by Genato and the "Commerce Building" on Unson's lot. Prior thereto, the latter had, on its Southern boundary, two (2) exists on Callejon del Carmen, which exist had

to be closed upon the construction of said building by Genato. Hence, alleging that Ordinance No. 3470 and the aforementioned contract of lease with Genato are illegal, petitioner instituted this action, with the prayer

"(*a*) That respondent Genato Commercial Corporation be immediately enjoined from doing further work in the construction ot a wall/or building on that portion of Callejon del Carmen leased to them immediately upon the petitioner's filing a nominal bond of P500, or in such other amount as the court may fix;

"(*b*) That, after trial, the injunction above-mentioned be made permanent, and ordering the respondent Genato Commercial Corporation to remove whatever construction has been done by them on said property;

"(*c*) That, also after trial, the Hon. Arsenio H. Lacson, Mayor of the City of Manila, be ordered to cancel and revoke the building permit and the lease granted to him over the Callejon del Carmen to the Genato Commercial Corporation;

"(*d*) That respondents be ordered to pay the costs of this suit: and for whatever equitable relief this Honorable Court may deem just and proper under the premises." (Record on Appeal, p. 5.)

The respondents filed their respective answers maintaining the legality of the municipal ordinance and the contract of lease in question, and, after due trial, the lower court rendered its aforementioned decision dismissing the case, upon the ground that as owner of Callejon del Carmen, the City of Manila "has full authority to withdraw such alley from public use and to convert it into patrimonial property" and that

"* * * The City of Manila as owner has the right to use and to dispose of such alley without other limitations than those established by law (Article 428, New Civil Code), so that when the City of Manila withdrew it from public use and converted it into to do so. That would be a negation of its right of ownership. The fact that in the Manila Charter there is no exact provision authorizing the Municipal Board to withdraw from public use a street and to convert it into patrimonial property, can not be construed to mean that the Municipal Board has no right at all to do so. That would be a negation of its right of ownership Section 18, letter (*x*), of the Manila Charter gives the Municipal Board power and authority to lay out, construct and improve streets, avenues, alleys, sidewalks, etc. and as corollary to that right is the right to close a street and to convert it into patrimonial property.

"Furthermore, Ordinance No. 3470 of the Municipal Board was submitted to and approved by the National Planning Commission. This body was created by an executive order of the President of the Republic, and vested with the power and authority to lay out, construct, vacate, and close streets, avenues, sidewalks, etc. Assuming that the power and authority to vacate or close a street rest with the State, this power as delegated to the National Planning Commission by the President in the exercise of his emergency power, and when this body approved said ordinance, it did so in the exercise of the power delegated to it by the State. Hence the validity of the ordinance is unquestionable." (Record on Appeal, pp. 27–29.)

Hence, this appeal taken by petitioner Unson, who insists that said Municipal Ordinance No. 3470 is illegal and, accordingly, that the aforementioned contract of lease between Genato and the City of Manila is null and void.

In this connection, respondents have been unable to cite any legal provision specifically vesting in the City of Manila the power to close Callejon del Carmen. Indeed, section 18(*x*) of Republic Act No. 409—upon which appellees rely—authorizes the Municipal Board of Manila, "subject to the provisions of existing laws, to provide for the laying out, *construction* and improvement * * * of streets, avenues, alleys * * * and other public places," but it says *nothing* about the *closing* of any such places. The significance of this silence becomes apparent when contrasted with section 2246 of the Revised Administrative Code, explicitly vesting in municipal councils of regularly organized municipalities the power to *close any municipal* road, street, alley, park or square, provided that persons prejudiced thereby are duly indemnified, and that the previous approval of the Department Head shall have been secured. The express grant of such power to the aforementioned municipalities and the absence of said grant to the City of Manila lead to no other conclusion than that the power was intended to be *withheld* from the latter.

Incidentally, said section 2246 refutes the view, set forth in the decision appealed from, to the effect that the power to withdraw a public street from public use is incidental to the alleged right of ownership of the City of Manila, and that the authority to close a thoroughfare is a corollary to the right to open the same. If the ownership of a public road carried with it necessarily the unqualified right of a municipal corporation to close it, by withdrawing the same from public use, then Congress would have no power to require, as a condition *sine qua non*, to the exercise of such right, either the prior approval of the Department Head or the payment of indemnity to the persons injured thereby. Again, pursuant to section 2243 of the Revised Administrative Code, the municipal council of regular municipalities shall have authority, among others:

"(*e*) To establish and maintain municipal roads, streets, alleys, sidewalks, plazas, parks, playgrounds, levees, and canals."

If, as the lower court held, the power to "construct" an alley entailed the authority to "close" it, then section 2246, above referred to, would have been unnecessary. To our mind, the main flaw in appellees' pretense and in the position taken by His Honor, the trial Judge, is one of perspective. They failed to note that municipal corporations in the Philippines are mere creatures of Congress; that, as such, said corporations possess, and may exercise,

only such powers as Congress may deem fit to grant thereto; that charters of municipal corporations should not be construed in the same manner as constitutions; [1] and that doubts, on the powers of such corporations, must be resolved in favor of the State, and against the grantee.[2]

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[1] "* * * But the distinction between construing a municipal charter or a legislative act granting power to a municipal corporation should be observed. 'To construe a constitution for the purpose of ascertaining whether under it a power can be granted is not the same thing as construing a charter when it is conceded a power can be constitutionally conferred, and the only inquiry is whether it has in fact been granted.' The charter or statute by virtue of which a municipal corporation is organized and created is its organic law and the corporation can do no act nor make any contract not authorized thereby. All acts beyond the scope of the power granted are void. In brief, a Municipal charter is generally construed as a grant and not a limitation of power, and therefore, power to pass an ordinance must be found in the charter in *express* language or arise by *necessary* implication. If the charter 'does not *explicitly* or inferentially contain such grant', the ordinance is *not authorized.*" (I The Law of Municipal Corporations by McQuillin, 2d. ed., 967.)

[2] "The extent of the powers of municipalities, whether express, implied, or indispensable, is one of construction. And here the *fundamental* and *universal* rule, which is as reasonable as it is necessary, is, that while the construction is to be just, seeking first of all for the legislative intent in order to give it fair effect, yet *any ambiguity or fair, reasonable, substantial doubt* as to the extent of the power is to be determined *in favor of the State* or general public, and *against the State's grantee.*" (I Dillon on Municipal Corporations, 5th ed., 452; (Italics supplied.)

"The judicial decisions recognize certain general rules of construction. One is that the charter of a corporation is the measure of its powers, and *the enumeration of those powers implies the exclusion of all others.* Another is, if there is a fair, reasonable doubt concerning the existence of the power in the charter, it will be resolved *against the corporation,* and the exercise of the power will be *denied.* Thus power conferred by charter to enact ordinances on specified subjects is to be construed *strictly,* and the exercise of such power must be confined within the general principles of the law applicable to such subjects." (The Law of Municipal Corporations by McQuillin [2nd ed.], Vol. I, pp. 968–969; Italics supplied.)

"The policy of the law is to require of municipal corporations a reasonably *strict* observance of their powers. Therefore, the courts incline to adopt a *strict* rather than a liberal construction.

* * * * * * *

"* * * As a general proposition, only such powers and rights can be exercised under grants of the legislature to corporations, whether public or private, as are *clearly* comprehended within the terms of the act or derived therefrom by *necessary* implication, regard being had to the objects of the grants.

"Since municipal powers are required to be conferred in plain, unambiguous terms, the general well-settled rule of construction is that *a doubtful power is a power denied.* That is any ambiguity or doubt arising out of the terms employed in the grant of power must be resolved *against the corporation* and in favor of the public." (Do., Do., pp. 1017, 1018–1021; (Italics supplied)".

Lastly, the authority of local governments to enact municipal ordinances is subject to the general limitation that the same shall not be "repugnant to law". This is so by specific provision of section 2238 of the Revised Administrative Code, as well as because Congress must be presumed to have withheld from municipal corporations, as its agents or delegates, the authority to defeat, set at naught or nullify its own acts (of Congress), unless the contrary appears in the most explicit, indubitable, and unequivocal manner—and it does not so appear in the case at bar. What is more, section 18(*x*) of Republic Act No. 409, positively declares that the power of the City of Manila to provide for the construction of streets and alleys shall be "subject to the provisions of existing law * * *"

However, the ordinance and the contract of lease under consideration are inconsistent with Article 638 of the Civil Code of the Philippines, the first paragraph of which reads:

"The banks of rivers and streams, even in case they are of private ownership, are subject throughout their entire length and within a zone of three meters along their margins, to the easement of public use in the general interest of navigation, floatage, fishing and salvage."

Obviously, the building constructed by Genato on the portion of Callejon del Carmen in dispute renders it impossible for the public to use the zone of three meters along the Northern margin of the Estero de San Sebastian for the purposes set forth in said Article 638. We are not unmindful of the cases of Ayala de Roxas *vs.* City of Manila (6 Phil., 251) and Chang Hang Ling *vs.* City of Manila (9 Phil., 215), in which this Court refused to enforce a similar easement—provided for in Article 553 of the Civil Code of Spain—upon private property adjoining the Estero de Sibacong and the Estero de la Quinta, respectively. The decisions in said cases were predicated, however, upon the fact that, under the Spanish Law of Waters, "the powers of the administration do not extend to the

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"The rule is generally stated that the scope of sovereignty delegated to municipal corporations should *not* be enlarged by liberal construction. The powers conferred are *strictly* construed, and any fair, substantial, and reasonable doubt concerning the existence of any power, or any ambiguity in the statute upon which the assertion of such power rests, is to be resolved *against the corporation,* and the power denied." (37 Am. Jur. 725; Italics supplied.)

"As a general rule, the powers of a municipal corporation are to be *strictly* construed, and any ambiguity or reasonable doubt is to be resolved *against the grant.*

"The powers of municipal corporations are *not* to be enlarged, as a general rule, by liberal construction. * * * generally it is held that the powers of municipal corporations are to be *strictly* construed." (62 C.J.S. 263; Italics supplied.)

establishment of *new* easements upon *private* property but simply to preserve old ones," and that, pursuant to the Philippine Bill (Act of Congress of July 1, 1902) and Article 349 of the Civil Code of Spain, no one shall be deprived of his property, except by competent authority and with sufficient cause of public utility, always after proper indemnity. These considerations are inapplicable to the case at bar, for, as regards Callejon del Carmen, the aforementioned easement of public use is *not new*. Besides, said alley is not private property. It belongs to the State.[3] And, even if it were—for it is not—patrimonial property of the City of Manila, the same—as a creature of Congress, which may abolish said municipal corporation and assume the power to administer *directly* the patrimony of the City, *for the benefit of its inhabitants*—cannot so use or dispose of said alley as to defeat the policy set forth in said Article 638 by the very legal creator of said political unit. (III Dillion on Municipal Corporations, pp. 1769–1771, 1781–1783, 1803–1804.)

It is urged, however, that the absence of authority of the Municipal Board of Manila has been cured by the fact that Ordinance No. 3470 had been approved by the National Urban Planning Commission. This pretense is untenable for:

1. In the case of University of the East *vs.* The City of Manila (L–7481), decided on December 23, 1954, we held, in effect, that the grant of powers to the National Urban Planning Commission, under Executive Orders Nos. 98 and 367, amounted to an undue delegation of legislative power, for lack of "specific standards and limitations to guide the commission in the exercise of the wide discretion granted to it."

2. Said Commission created by Executive Order No. 98, dated March 11, 1946, pursuant to the emergency powers of the President under Commonwealth Act No. 671, could not possibly confer upon the City of Manila any power denied thereto by its New Charter—Republic Act No. 409—

[3] "Whether the fee of the street be in the municipality in trust of the public use, or in the adjoining proprietor, it is, in either case, of *the essence of the street that it is public,* and hence, as we have already shown, *under the paramount control of the legislature as the representative of the public. Streets do not belong to the city or town within which they are situated, although acquired by the exercise of the right of eminent domain and the damages paid out of the corporation treasury. The authority of municipalities over streets they derive, as they derive all their other powers, from the legislature,—from charter or statute.* The fundamental idea of a street is not only that it is public, but *public for all purposes of free and unobstructed passage, which is its chief and primary, but no means sole, use.*" (III Dillon on Municipal Corporations, p. 1849; Italics supplied.)

not only because said emergency powers became inoperative as soon as Congress met in regular sessions after the liberation of the Philippines (Araneta *vs.* Dinglasan, Rodriguez *vs.* Treasurer of the Philippines, Guerrero *vs.* Com. of Customs, and Barredo *vs.* Commission on Elections, 45 Off. Gaz., 4411, 4419; Rodriguez *vs.* Gella, 49 Off. Gaz., 465), but, also, because in case of conflict between said executive order, dated March 11, 1946, and the aforementioned Republic Act No. 409, which was approved, and became effective, on June 18, 1949, the latter must prevail, being posterior in point of time, as well as an act of the principal (in relation to the emergency powers delegated to the President, by Commonwealth Act No. 671), which must prevail over that of the agent.

3. Pursuant to said executive order, the acts of municipal corporations, relative to the reconstruction and development of urban areas—even if within the scope of the general authority vested in said local governments by the charters thereof—shall be ineffective unless approved by the National Urban Planning Commission, or in accordance with the plans adopted or regulations issued by the same. In other words, the purpose of said executive order was *not* to enlarge the powers of local governments, but to *qualify and limit* the same, with a view to accomplishing a coordinated, adjusted, harmonious reconstruction and development of said urban areas.

4. Properties devoted to public use, such as public streets, alleys and parks are presumed to belong to the *state*. Municipal corporations may not acquire the same, as patrimonial property, without a grant from the National Government, the title of which may not be divested by prescription (Municipality of Tigbauan *vs.* Director of Lands, 35 Phil., 584). Hence, such corporations may not register a public *plaza* (Nicolas *vs.* Jose, 6 Phil., 598). A local government may not even lease the same (Municipality of Cavite *vs.* Rojas, 30 Phil., 602). Obviously, it may not establish title thereto, adverse to the state, by withdrawing the plaza—and, hence, an alley—from public use and declaring the same to be patrimonial property of the municipality or city concerned, without express, or, at least, clear grant of authority therefor by Congress.

5. In fact, the Department of Engineering and Public Works of the City of Manila had objected to the lease in question, upon the ground that Callejon del Carmen is communal property. In its 1st indorsement of June 4, 1953, to the City Mayor, said department used the following language:

"1. Records in the present lease of Genato Commercial Corporation of a portion of City property measuring 709.27 square meters, more or less, show that *this Office had consistently been strongly*

against the lease of this City property. Even before the passage of Ordinance No. 3470 (withdrawing from public use those portions of Callejon del Carmen, Quiapo, adjacent to the premises of the Genato Commercial Corporation; declaring the same as patrimonial the lease of said City property with an aggregate area of 709.27 square meters to Genato Commercial Corporation at a monthly rental of P0.20 per square meter), *this Office had voiced its vigorous protest to the lease of this City property to Genato Commercial Corporation several times, in view of the fact that the lots applied for are communal property which can not be leased or otherwise disposed of* (Cavite *vs.* Roxas, 30 Phil., 602). *This Office had registered its strong objection to the lease of this property* as per our 2nd Indorsement dated August 2, 1951, 4th Indorsement dated August 7, 1951 and 3rd Indorsement dated August 27, 1951, *all of which were submitted by this Office prior to the enactment of Ordinance 3470 on September 28, 1951 and its subsequent approval on October 3, 1951.* * * * It can, therefore, clearly be seen from the foregoing, that *this Office had been strongly against the lease of this City property in view of the fact that this is a communal property.* The property herein applied by Mr. Francisco G. Genato is also a communal property of the City of Manila and *disapproval of the same is strongly recommended.*" (Exhibit C, pp. 4–5, par. 1, Folder of Exhibits; (Italics supplied.)

WHEREFORE, the decision appealed from is hereby reversed and another one shall be entered declaring Ordinance No. 3470, as well as the contract of lease in dispute, null and void, with costs against the respondents.

IT IS SO ORDERED.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Judgment reversed.

DECISIONS OF THE COURT OF APPEALS

[No. 13578–R. September 30, 1958]

ANTONIO SUANSON, plaintiff and appellee, *vs.* VICTORIANO MAGALLONES, defendant and appellant

1. HOMESTEAD; PROTECTION OF RIGHTS OF APPLICANT; POSSESSORY ACTION.—Once entry or possession over a public land is authorized by the Bureau of Lands pursuant to law, the applicant possessor may look upon the executive and judicial departments for the protection of his rights—from the administrative officials for the issuance of a homestead patent upon compliance with all the requisites of the law, and from the courts for the maintenance of his peaceful possession against intruders which could be asserted through a possessory action (Pitargue *vs.* Sorilla, G.R. No. L—4302, September 17, 1952), so long as his right to possess the land is not forfeited by him or revoked by the Director of Lands.
2. JUDGMENT; EXECUTION PENDING APPEAL DISCRETIONARY.—The trial court is empowered to issue writs or processes for the preservation or protection of the rights of litigants. Where a trial court has timely issued an order allowing execution unless an appellant filed a bond, said court has jurisdiction to issue, upon the appellant's failure to file said bond, another order to carry out the pre-existing order even if, in the meantime, the record on appeal had already been approved (Naredo *vs.* Yatco, 45 Off. Gaz., 3390).
3. CRIMINAL PROCEDURE; CRIMINAL CONTEMPT PROCEEDING SEPARATE AND DISTINCT FROM MAIN CASE.—A Contempt proceeding criminal in nature is separate and distinct from the main case (Rule 64, Rules of Court). An aggrieved party can not in an appeal from an ordinary civil action seek the same relief which he had lost for failure to seasonably invoke it in the contempt proceedings.

APPEAL from a judgment of the Court of First Instance of Isabela. Mendoza, *J.*

The facts are stated in the opinion of the Court.

Leonardo Jimenez, for defendant and appellant.
Silvestre Br. Bello, for plaintiff and appellee.

DE LEON, *J.:*

The lower court has correctly summed up the salient facts that occurred before the filing of the complaint in this case, as follows:

"(1) That the land in question was surveyed by a Private Land Surveyor in the year 1932 at the instance of Pedro Suanson, father of the plaintiff under PSU-97966 (Exhibit "A");

(2) That the land in question was declared for taxation purposes in the name of Pedro Suanson as evidenced by Tax Declaration No. 16935 (Exhibit "B"); Tax Declaration No. 5019 (Exhibit "C") cancels Tax Declaration No. 16935 and both in the name of Pedro

Suanson. Tax Declaration No. 16935 supersedes Tax Declaration Nos. 15334 and 16934, also in the name of Pedro Suanson;

(3) That the plaintiff paid yearly taxes of the land in question as evidenced by Exhibits "D", "D–1", "D–2" and "D–3". The plaintiff testified that the land tax receipts corresponding to the year 1944 and previous years were burned together with his house;

(4) That the land in question is the subject matter of an administrative investigation between the plaintiff on one hand and the heirs of Ana Quirabu, heirs of Alejandro Quirabu and the defendant Victoriano Magallones on the other hand before the Bureau of Lands. As a result thereof, a decision was rendered dated September 30, 1949 (Exhibit "H") declaring without merit the claims of the heirs of Ana Quirabu, heirs of Alejandro Quirabu and that of the defendant Victoriano Magallones, and cancelling their respective homestead applications whereas the homestead application of the plaintiff Antonio Suanson, was accepted, recorded and given due course.

(5) That the defendant, Victoriano Magallones, filed a motion for reconsideration against the decision, (Exhibit "8" and "9") which was denied by the order of the Director of Lands dated October 18, 1951, declaring the allegations of the defendant Victoriano Magallones in his motion for reconsideration to have no merit. The Director of Lands went further by saying, that 'not only has the decision sought to be reconsidered been rendered in consonance with the law on the matter and the dictate of equity and jusice but that said decision is also fully supported by the preponderance of evidence and the facts proven" (Exhibit "I").

(6) That both parties admit that the land in question is a public land. This fact was proven by the defendant by his Exhibit "I" in that it was declared public land by the Court of First Instance of Isabela.

The question at issue in the case at bar is one of recovery of possession described in Paragraph 2 of the complaint, predicated on the alleged fact in Paragraph 7 of the complaint which reads as follows:

> "That on May 13 and 15, 1950, defendant, by means of force, intimidation, threat, strategy, or stealth, unlawfully entered not only the two (2) hectare portion alleged to have been forcibly entered by the plaintiff and eight others on January 3, 1950, but also the remaining portion of the parcel of land described in Paragraph 2 of this complaint and ousted the plaintiff therefrom by plowing it and planting the same to corn."

Aside from the above mentioned facts proven by the plaintiff, it is interesting to note that on August 28, 1947, the defendant, Victoriano Magallones, filed an action of forcible entry and detainer against the plaintiff herein, Antonio Suanson, together with his father, Pedro Suanson, and one Benito Publico in the Justice of the Peace Court of Tumauini, Isabela (Exhibit "E"). In the complaint, Exhibit "E", it is alleged in its Paragraph 4 that on or about the 28th day of December, 1946, the defendants, conspiring and mutually aiding one another, by means of force and intimidation, threat and strategy, and notwithstanding energetic opposition of the plaintiff, entered upon and plowed the parcel of land described above, thus unlawfully depriving the plaintiff of the possession of said parcel of land and illegally withholding the same since then.' The above mentioned case of forcible entry and detainer was dismissed by the Justice of the Peace Court of Tumauini, Isabela on January 21, 1948 (Exhibit "F"). The decision of the Justice of the Peace Court was not appealed and became final."

The complaint for recovery of possession alleges that plaintiff and his father, Pedro Suanson, have been in actual, open, peaceful and continuous possession of the land in question consisting of 11.1436 hectares, located in barrio Lattu, Tumauini, Isabela, from 1929 up to May, 1950, when the defendant, by means of force, intimidation, threat, strategy or stealth, unlawfuly took possession of the entire property, plowing and planting corn thereon. The answer avers that defendant Victoriano Magallones and his father, Estanislao Magallones, have been in open, public, continuous and adverse possession and cultivation for more than 30 years of the land in question, consisting of 8 hectares, and that the decision of the Director of Lands, dated September 30, 1949, has not yet become final due to the filing of an appeal by said defendant with the Department of Agriculture and Natural Resources.

After trial, the lower court rendered judgment, ordering the defendant, his agents, representatives, or persons acting in his own behalf, to vacate the land described in the complaint and to deliver the same to the plaintiff; and to pay ₱7,000.00 as the value of the crops harvested from the property during the agricultural years 1950 and 1951, plus ₱3,500.00 yearly until possession of the land has been delivered to the plaintiff, as well as the costs of suit.

The denfendant's appeal from the aforesaid decision was perfected on December 6, 1952. Prior thereto, plaintiff filed a petition for execution of judgment pending appeal. The court *a quo*, in its order, sustained the special reasons advanced by plaintiff's counsel for the issuance of the execution pending appeal, but held in abeyance the issuance of an order of execution and required the defendant to file a supersedeas bond of ₱10,000.00 within 5 days. No bond was filed by the defendant, so that on December 6, 1952, the same date the record on appeal was approved, the lower court ordered the issuance of a writ of execution "in accordance with the tenor of the decision." The plaintiff was restored to his possession on December 12, 1952. On January 5, 1954, the defendant and his companions reentered the premises by means of force and intimidation, so that the plaintiff filed a petition to cite the defendant for contempt. On March 24, 1954, the trial court found the defendant guilty of contempt and accordingly sentenced him to suffer an imprisonment of one month, to pay a fine of ₱100.00, with subsidiary imprisonment in case of insolvency, and to vacate the land immediately. It appears that the decision in the contempt case became final, defendant was committed to jail, and the notice of appeal filed beyond the 15-day period was denied.

In this appeal, the defendant has assigned the following errors allegedly committed by the court below:

"1. The lower court erred in not dismissing the complaint after finding out that the plaintiff-appellee had falsely stated in his verified complaint that the decision in his favor rendered by the Director of Lands on September 30, 1949, concerning the homestead conflict between the parties became final.

"2. The lower court erred in issuing a writ of execution of its decision knowing fully well that this case is pending appeal before this Honorable Court.

"3. The lower court erred in sentencing defendant-appellant to suffer thirty (30) days imprisonment and ₱100.00 fine knowing fully well that this case is pending appeal before this Honorable Court, which sentence unduly deprived herein defendant-appellant of his liberty."

Under the first assignment of error, the appellant maintains that the court below erred in not dismissing the complaint because it supposedly falsely alleged that the decision of the Director of Lands has become final, which is contrary to the lower court's finding that said decision of the Director of Lands is on appeal with the Department of Agriculture and Natural Resources. Assuming that the allegation was false, we believe that it was made in good faith. The appellant's motion for reconsideration of the decision of the Director of Lands was denied on October 18, 1951, the complaint in this case was filed on November 28, 1951, and the appellant filed his notice of appeal against the decision of the Director of Lands only on or after January 9, 1952. We believe, however, that this phase of the controversy is inconsequential in the face of the appellant's omission to question in this appeal the all-important conclusion of the lower court that the preponderance of the evidence militates in favor of the appellee. In other words, these facts are not disputed in this appeal: the appellee and his father have been in the open and continuous possession of the homestead since 1929 adverse to the appellant and all other claimants; the Director of Lands has recognized only the appellee as the applicant entitled to enter and cultivate the entire land in accordance with the requirements of the Public Land Law and the rules and regulations preliminary to the issuance of a patent; and, the just share of the appellee to the crops harvested on the land is approximately ₱3,500.00 a year.

Granting that the administrative case is not yet final as the same is pending appeal—although this is disputed by the appellee who contends that since he filed his brief with this Court he has not received any notification to the effect that the appellant's appeal with the Department of Agriculture and Natural Resources has been given due course, the propriety of the present action for possession can not be questioned. Once entry or possession over a public land

is authorized by the Bureau of Lands pursuant to law, the applicant-possessor may look upon the executive and judicial departments for the protection of his rights—from the administrative officials for the issuance of a homestead patent upon compliance with all the requisites of the law, and from the courts for the maintenance of his peaceful possession against intruders which could be asserted through a possessory action (Pitargue *vs.* Sorilla, G. R. No. L–4302, September 17, 1952), so long as his right to possess the land is not forfeited by him or revoked by the Director of Lands.

The second assignment of error is clearly untenable. A trial court is empowered to issue writs or processes for the preservation or protection of the rights of litigants. In Naredo *vs.* Yatco, 45 Off. Gaz., 3390, it was ruled that where a trial court has timely issued an order allowing execution unless an appellant filed a bond, said court has jurisdiction to issue, upon the appellant's failure to file said bond, another order to carry out the pre-existing order even if, in the meantime, the record on appeal had already been approved.

The third or last assignment of error is also bereft of merit. A contempt proceeding criminal in nature is separate and distinct from the main case (Rule 64, Rules of Court). An aggrieved party can not in an appeal from an ordinary civil action seek the same relief which he has lost for failure to seasonably invoke it in the contempt proceedings.

WHEREFORE, no reversible error having been committed, the judgment of the court below is hereby affirmed in all its parts, with costs.

SO ORDERED.

Makalintal and *Castro, JJ.*, concur.

Judgment affirmed.

[No. 20105-R. October 4, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* AMBROSIO BATOON, defendant and appellant

1. CRIMINAL LAW; ESTAFA DISTINGUISHED FROM THEFT.—There is estafa in case of misappropriation if the juridical or legal possession is transferred along with the material possession over personal property. If only the material or physical possession is transferred, there is theft in case of misappropriation for the offender has usurped rights of possession and ownership.
2. ID.; QUALIFIED THEFT; ELEMENT OF ACTUAL TAKING; CASE AT BAR.—The actual taking with intent of gain is enough to consummate the crime of theft (U. S. *vs.* Adiao, 38 Phil. 754; U. S. *vs.* Sobrevilla, 53 Phil. 226). In the case at bar, the loading of 19.2 liters out of 50 liters of requisitioned gasoline in a separate container, contrary to the express instruction that accused cause all of the said 50 liters to be loaded on the tank of his service truck, constitutes the actual taking envisioned by the law. (People *vs.* Trinidad, 50 Phil. 65, 67; People *vs.* Naval and Beltran, 46 Off. Gaz. 2641)

APPEAL from a judgment of the Court of First of Cebu. Diez, *J.*

The facts are stated in the opinion of the Court.

Causin O. Pogado and *Hilario Capotulan,* for defendant and appellant.

Assistant Solicitor General Antonio A. Torres and *Solicitor Sumilang V. Bernardo,* for plaintiff and appellee.

DE LEON, *J.:*

Ambrosio Batoon was charged with the crime of qualified theft in the Municipal Court of Cebu City. After due trial, the accused was found guilty of frustrated *estafa.* He appealed to the Court of First Instance of Cebu. After another trial, the accused was found guilty of frustrated qualified theft of gasoline worth ₱4.51 and sentenced to suffer an imprisonment of 6 months and 1 day of *prision correccional,* with the accessories of the law, and to pay the costs. Not satisfied, the accused has come to this Court.

Sometime in December, 1953, the football players of the William Lines, Inc., in Cebu, complained to the office manager of the company that the service truck of the company, marked "Football Team", did not have gasoline after one or two nights. The complaint was referred to the Cebu Police Force, and Detective Teodoro Abesia was detailed to shadow the accused-appellant as the driver of the service truck marked "FOOTBALL TEAM." On Fbruary 8, 1954, the appellant went to the Corominas-Richard gasoline station at Cebu City. De-

tective Abesia observed that the appellant caused a container to be filled with gasoline before the tank of the truck itself has loaded with gasoline. Upon the appellant's departure, Abesia approached and asked the gas station attendant if the container of the appellant was full of gasoline, and the said attendant replied in the affirmative. Abesia then proceeded to Comercio street where the appellant used to pass. There Abesia noticed the appellant walking around as if looking for somebody. Shortly thereafter, the passenger truck "St. Francis" arrived. The appellant approached its driver, Manuel Gica. Abesia overheard the appellant ask Gica if the latter wanted to buy gasoline. When Gica answered that he was, the appellant repaired to his truck, took the container which was full of gasoline and, with it, boarded the St. Francis truck beside Gica. Detective Abesia also boarded the truck and, after he had identified himself, took the appellant and Gica to the police station on the St. Francis truck.

In exculpation, the appellant said that he had just arrived from Misamis in the morning of February 8, 1954. At the office of the William Lines, Inc., he performed his usual chores, after which he took from one Mr. Domingo Tanseco a requisition slip for 50 liters covered by his requisition slip and to load the same on the tank of the jeep. He also declared that he went to Calle Comercio in order to see Manuel Gica and request him to get clean clothes for him from his home. After he had talked with Gica and was about to alight from the latter's vehicle, Det. Abesia appeared and, holding the container full of gasoline, said that he was under arrest for selling the gasoline inside the container. Nicolas Quiros and Josefa Loro tried to corroborate the defense claim that the appellant needed clean clothes on the day in question.

At the trial, the appellant admitted his signature on his sworn statement, now in the record of this case as Exhibit D for the prosecution, wherein he admitted having sold the gasoline to Manuel Gica. He claimed, however, that he signed Exhibit D without reading it and that no one read its contents to him. Felicisimo Rodriguez, an attendant of the Corominas-Richard gasoline station, revealed that the appellant used to go to the gas station once every 3 days since 1953 with a requisition for 50 liters of gasoline, and that the said appellant used to bring a gasoline container which he filled with 19.2 liters of gasoline before filling the tank of the truck. Jose Angbetic, employee of the complainant, said that the 50 liters of gasoline covered by the

requisition given to the appellant every 2 or 3 days were for the exclusive use of the truck "Football Team", Atty. Cresenciano Cañete, who investigated the appellant at police headquarters, positively testified that the appellant admitted having sold the gasoline to Manuel Gica who, likewise, admitted having bought the same. Honorata S. Palacio, a stenographer of the City Fiscal's Office, Cebu City, identified Exhibit D which bears her initials "hsp" at the bottom of said Exhibit. Palacio categorically stated that she was the one who typed said Exhibit D in the presence of the appellant who dictated what now appears on said affidavit. We find no valid reason for disbelieving Rodriguez, Palacio, and Atty. Cañete of the police force. The testimonies of Josefa Loro and Nicolas Quiros, conductor of the St. Francis truck, are unavailing. Loro saw the appellant when the latter was already apprehended. While Quiros claimed that he was the one requested by the appellant to fetch clean clothes for the latter at Guinsay, Danao, the appellant said that it was driver Gica whom he had requested to get clean clothes for him and that was why he was on the driver's seat beside Gica when Det. Abesia appeared and arrested them. Lastly, we can not give credence to the appellant's pretension that he is the victim of a frame-up when he refused to register as a voter in Ginobacan, Misamis Occidental, prior to the 1953 elections, because he is not a resident of that place. He disclosed, however, that he was still Mr. Chiongbian's favorite and still living in the house of said Mr. Chiongbian on February 8, 1954. He even said that it was Mrs. Felisa Chiongbian who furnished the bond for his provisional release, and that he was advised by said Mrs. Chiongbian to see and ask forgiveness from Mr. Chiongbian. These revelations belie the claim that the appellant is a victim of a political revenge, and prove that the said appellant had fully enjoyed the esteem and confidence of his employer.

All the above circumstances clearly establish that the appellant caused 19.2 liters of gasoline to be loaded on his gasoline container, out of the 50 liters covered by the requisition slip of the William Lines, Inc., in whose account the said 50 liters of gasoline were charged for payment, for the purpose of selling it. What crime was committed—qualified theft or *estafa* through breach of confidence? The trial court ruled, and the Solicitor-General agrees, that the crime committed is qualified theft. Considering the facts and the law, we hereby make a similar conclusion. The appellant might be deemed to have material possession of the gasoline from the mo-

ment the requisition slip was honored by the gas station employee, but the juridical possession remained in the complainant to whom the 50 liters of gasoline were to be charged for payment. (There is *estafa* in case of misappropriation if the juridical or legal possession is transferred along with the material possession over personal property. If only the material or physical possession is transferred, there is theft in case of misappropriation for the offender has usurped rights of possession and ownership.) Thus, an accused who smuggled radio tubes from a signal depot where he worked as a radio technician and, as such, has access to various items essential for repair and maintenance of radios, and who later on delivered said radio tubes to a middleman for monetary gain, is guilty qualified theft (People *vs.* Jimenez, CA–G. R. No. 12094–R, January 29, 1955). Again, a forage master, having charge of Government forage subject to the orders of the quartermaster who was directly responsible to the United States Government and without whose order no forage could be issued, who caused bales of hay to be sent out of the corral for delivery to private individuals for which the Government received no payment, is guilty of theft, because he had no right to sell the hay or to part with its physical custody unless on written orders of his superior and his possession was not such a possession as to render the abstraction of the property by him malversation. In these aforecited cases, the defendants therein had access to, or possession of, the articles inside the depot or corral by reason of their positions, but can not use or bring out a single item or bundle without prior approval of their superiors. By the same token, the appellant in the instant prosecution had physical possession of the requisitioned gasoline by reason of his employment as driver of the service truck with orders to cause all of the 50 liters of gasoline to be loaded on the service truck so that an nuauthorized abstraction of a part or all of the gasoline by the appellant would constitute theft, not *estafa*.

What is left to be determined is whether or not the appellant committed the consummated crime of qualified theft or merely a frustration thereof. The facts of the cases of U. S. Adiao, 38 Phil. 754, and U. S. *vs.* Sobrevilla, 53 Phil. 226, indicate that actual taking with intent of gain is enough to consummate the crime of theft. In the Sobrevilla case, *supra,* it was held:

"It is contended in this instance that these facts only constitute the crime of frustrated, and not consummated, theft. We believe such a contention is groundless. The appellant succeeded in taking the pocketbook, and that determines the crime of theft.

If the pocket-book was afterwards recovered, such recovery does not affect the appellant's criminal liability, *which arose from the appellant having succeeded in taking the pocket-book.*" (Italics supplied).

We believe that the loading of 19.2 liters out of the 50 liters of requisitioned gasoline in a separate container, contrary to the express instruction that appellant cause all of the said 50 liters to be loaded on the tank of his service truck, constitutes the actual taking envisioned by the law. In People *vs.* Trinidad, 50 Phil. 65, 67, our Supreme Court quoted with approval from 17 R. C. L. pp. 15 and 16, as follows:

"A felonious taking is necessary in the crime of larceny, and generally speaking, a taking which is done with the consent or acquiescence of the owner of the property is not felonious. But if the owner parts with the possession thereof for a particular purpose, and the person who receives the possession avowedly for that purpose has the fraudulent intention to make use of it as the means of converting it to his own use, and does so convert it, this is larceny, for in such case, the fraud supplies the place of the trespass in the taking, or as otherwise stated, the subsequent felonious conversion of the property by the alleged thief will relate back and make the taking and conversion larceny. And it has been said that the act goes farther than the consent, and may be fairly said to be against it. If money is given to a person to be applied to a particular purpose, it is larceny for the receiver to appropriate it to his own use which was not the purpose contemplated by the owner. Obtaining money under the false pretense that it is to be bet on a horse race, and with the intent at the time to convert it to the bailee's own use, the race being a fere sham to aid this purpose, is larceny. The rule has been applied also to cases in which a person takes a piece of money from another to change therefor, on demand; and the fact that the taking was open and from the owner is of no consequence, if the intent to steal existed. This is so for the reason that the delivery of money to another for the sole purpose of getting it changed is a parting with the custody only and not the title. The fact that the offender returns a part of the amount does not relieve him from liability for the larceny of the entire amount given him." (Underlining supplied).

liters of gasoline from the moment they were poured into his gasoline container. In People *vs.* Naval and Beltran, 46 Off. Gaz. 2641, a plainclothesman was detailed to probe pilferage cases in the piers. Pretending to be a laborer, he boarded a truck which the accused whom he was shadowing also boarded. On the way, the accused dumped one of the boxes, containing 120 bed sheets, on the ground, whereupon he was immediately placed under arrest by the plainclothesman. It was contended by the defense that the accused did not yet have complete, independent and absolute possession and control of the items adverse to the right of their owner at the time accused was

apprehended. This contention was rejected, and it was there said that from the moment he dropped the box containing the bed sheets the appellant placed the property, which did not belong to him, in a position where he could have disposed of it for his own personal gain. Said this Court in that case:

"In the juridicial sense, the consummation of the crime of theft (or robbery) takes place upon the voluntary and malicious taking of the property belonging to another whereby the thief places it under his control and in such a situation as he could dispose of it at once."

What occurred after the appellant had caused 19.2 liters to be placed in his gasoline container showed the intent of gain. The appellant immediately proceeded to Commercio St. for the purpose of contacting his buyer. He saw Manuel Gica to whom he offered to sell the gasoline inside his gasoline container. Manuel Gica agreed to buy the gasoline and, to consummate the deal, the appellant boarded Gica's truck with the gasoline container but the duo were not able to effect the sale due to the timely arrival of Detective Abesia.

Conformably with the recommendation of the Solicitor-General, we hereby hold that the offense committed is consummated qualified theft, as charged in the information, and not frustrated qualified theft, as found by the court below. The value of the stolen gasoline is not over ₱5.00. For lack of modifying circumstances to consider, the prescribed penalty, which is *prisión correccional* in its medium and maximum periods, should be imposed in its medium period. Considering the Indeterminate Sentence Law, as amended, we hereby sentence the appellant to suffer an indeterminate penalty ranging from 6 months and 1 day to 2 years and 4 months of *prisión correccional.*

Modified as above-indicated, the appealed judgment is hereby affirmed in all other respects, with costs.

SO ORDERED.

Makalintal and *Castro, JJ.*, concur.

Judgment modified.

[No. 7716-R. October 4, 1958]

THE PEOPLE OF THE PHILIPPINES, plaintiff and appellee, *vs.* NICOLAS MALLARI Y SANTOS, defendant and appellant

CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARMS; CASE AT BAR.—It is true that in statutory offenses, it is enough that the statute has been violated, and that it is not necessary to inquire whether there was intent to violate it. However, bearing in mind the circumstances surrounding the instant case, we are inclined to take a liberal view. It seems that the spirit of the law regarding the possession of firearms is to punish only those who possess the same without the knowledge of the authorities concerned, and without even bothering themselves to legalize such possession. In the instant case, where the accused had a pending application for permanent permit to possess a firearm, and whose possession was not unknown to an agent of the law who advised the former to keep it in the meantime, any doubt as to his claim should be resolved in his favor. The mere fact that appellant failed to present at the trial a sort of a certification showing that he had previously filed an application for a permanent permit to possess a firearm does not destroy the efficacy of his exculpatory claim which was by the way corroborated by an agent of the law. The failure to seasonably secure and present such certificate, which was apparently due to lack of material time, should not be allowed to prevail and cause the conviction of appellant who had nothing to do with the approval or disapproval of the application which he had filed prior to the expiration of his temporary permit. Appellant should not be made to suffer the consequence of the delay of the action on his said application, for to do so would amount to an oppression.

APPEAL from a judgment of the Court of First Instance of Rizal. Gatmaitan, *J.*

The facts are stated in the opinion of the Court.

Jorge E. de Leon, for defendant and appellant.

Solicitor General Edilberto Barot and *Solicitor Jorge R. Coquia,* for plaintiff and appellee.

PEÑA, *J.:*

Armed with a search warrant, a search party, headed by police lieutenant Bayani Cordero of the Caloocan (Rizal) Police Department, repaired to the house of Nicolas Mallari y Santos at 12th Avenue Street, No. 12-C Grace Park, of the same municipality. Showing the search warrant, Lt. Cordero asked Nicolas Mallari if he had any firearm to which question the latter replied in the affirmative, but he did not know where his wife had placed it. The firearm was then produced by Mrs. Mallari who subsequently handed it to the party. Nicolas Mallari was consequently placed under arrest, although he informed Lt. Cordero that he had a pending application for the renewal of his permit to possess firearm, and later on accused of the offense of illegal possession of firearm in the Justice

of the Peace Court of Caloocan, Rizal. As the accused waived his right to preliminary investigation, the case was remanded to the Court of First Instance of Rizal where the corresponding information was filed against him.

After due trial, judgment was rendered the dispositive portion of which is as follows—

"IN VIEW WHEREOF, recommending executive clemency, we find accused guilty as charged; and sentence him to imprisonment of one year and one day and to pay the costs. The pistol and ammunition exhibited in Court are ordered confiscated."

From the aforesaid judgment, the accused appealed. Before filing his brief, the accused filed a motion for new trial. It was, however, resolved to defer action on said motion which was to be taken up when the case is considered for decision on its merits.

It appears that appellant was a guerilla officer during the Japanese occupation. When he retired from the Philippine Army on March 1, 1946, he was a first lieutenant. For the pistol he had been in possession of since his guerrilla days, he secured a temporary permit to hold the same, renewing it from time to time, the last of which renewals having been made on November 15, 1948. It expired three months thereafter, or on February 15, 1949. According to appellant, sometime before and after the expiration of his temporary permit, he went to the Constabulary Headquarters at Camp Crame, Quezon City, and asked the help of his acquaintance by the name of Jesus Santos to secure a permanent license for his revolver. He further claimed that he was advised by his acquaintance to keep in the meantime his revolver, pending the issuance of a permanent permit for its possession. The application was duly filed with the Firearms Division of the Philippine Constabulary. And Constabulary agent Jesus Santos corroborated appellant's claim. He testified thus::

Q. You did not remind him that the license which he wanted renewed was not renewed.

A. Because his application is still pending in the office.

Q. But the policy of your office at present and during the time this application for renewal was filed was not to issue licenses except to government employees.

A. A person who carried a temporary license is authorized to hold firearm.

COURT:

Q. The fiscal wants to know from you whether it was the policy of your office to issue permanent license at the time Mallari went to your office?

A. Our policy is that if you have temporary permit and you are applying for a permanent license, an investigation is conducted on the firearm holder and in the meantime the firearm holder could go on holding the firearm.

Q. The fiscal wants to know if your office is also authorized to issue permanent license?

A. Yes. (t.s.n., pp. 25–27).

Under the foregoing circumstances, appellant now asks for his acquittal on the grounds that the lower court erred—

1. In not giving any faith and credit to the testimony of the accused Nicolas Mallari y Santos and witness Jesus Santos to the effect that the accused had filed an application for a permanent license with the Philippine Constabulary, Camp Crame, Quezon City, the day following the expiration of his temporary permit (Exhibit "P–5"); and that said application was still pending process at the time of his (Mallari) arrest and trial for illegal possession of the firearm in question, although said testimony stand uncontroverted in the records of the case.

2. In drawing an oblique comparison between the instant case and the case of Chua Bi Sing and in concluding that the ruling in the Chua case is not applicable to the case at bar. Thus, resulting in its finding that the accused Mallari is guilty of the offense charged.

3. In concluding that "all and any provisional authority or provisional license or temporary permit of Nicolas (Mallari) to continue holding his gun during the pendency of his alleged application expired on May 15th, 1949; as he continued to do so up to April 5, 1950, he was guilty".

4. In not acquitting the accused on the ground of reasonable doubt and in sentencing him as it did.

It is true that in statutory offenses, like the case at bar, it is enough that the statute has been violated, and that it is not necessary to inquire whether there was intent to violate it. For the mere execution of the prohibited act is in itself sufficient to constitute a crime.

However, bearing in mind the circumstances surrounding the instant case, we are inclined to take a liberal view. It seems that the spirit of the law regarding the possession of firearms is to punish only those who possess the same without the knowledge of the authorities concerned, and without even bothering themselves to legalize such possession. The bare testimony of Jesus Santos undoubtedly shows that appellant had a pending application for permanent permit to possess a firearm, whose possession was not unknown to an agent of the law (Jesus Santos) who admitted that he advised the former to keep it in the meantime. Unfortunately, pending action, one way or the other, of appellant's application, the police authorities of Caloocan, Rizal, repaired to his house and, as stated above, his revolver was peacefully produced and handed to them. We could not under such circumstance pronounce a judgment of guilt upon accused-appellant. For, indeed, any doubt as to the truth of appellant's claim that he had filed with the Philippine Constabulary an application to possess a firearm as well as his claim that he was advised to hold his firearm in the meantime should be resolved in his favor in the face of the testimony of Constabulary agent Jesus Santos. It is true that the testimony of Jesus Santos to that effect is not corroborated by documentary evidence.

On the strength of the nature of such testimony, the trial court discredited appellant's exculpatory claim and at the same time considered the instant case as one not analogous to that of Chua Bi Sing, 45 Off. Gaz., 3497. We do not share with this view. The mere fact that appellant failed to present at the trial a sort of a certificate showing that he had previously filed an application for a permanent permit to possess a firearm does not destroy the efficacy of his exculpatory claim which was by the way corroborated by agent Jesus Santos. The failure to seasonably secure and present such certificate, which was apparently due to lack of material time, should not be allowed to prevail and cause the conviction of appellant who had nothing to do with the approval or disapproval of the application which he had filed prior to the expiration of his temporary permit. Appellant should not be made to suffer the consequence of the delay of the action on his said application, for to do so would amount to an oppression. And by way of making a comparison between the instant case and that of Chua Bi Sing, *supra,* it seems that the attendant circumstances of the former are more conducive to a liberal attitude than those of the latter.

For all the foregoing consideration, we do not deem it necessary to remand this case to the court of origin for purposes of new trial, as we consider the testimonies of appellant and his witnesses as quite satisfactory in showing what the trial court was looking for.

WHEREFORE, the judgment appealed from is hereby set aside and another entered acquitting accused-appellant of the offense with which he was charged, with costs *de-oficio.*

IT IS SO ORDERED.

Dizon and *Cabahug, JJ.*, concur.

Judgment reversed.

[No. 18418-R. October 9, 1958]

PHILIPPINE ACETYLENE CO., plaintiff and appellee, *vs.* BENJAMIN B. GEORGE and MOISES B. RAMOS, defendants and appellants.

ATTORNEYS-AT-LAW; COURT DECORUM AND DUTY TO OPPOSING COUNSEL.—A lawyer is, first of all, an officer of the court and is its indispensable aid in the fair and impartial administration of justice. Proper deference to it must therefore always be maintained by him, and self-restraint must be exercised in the face of an adverse decision. Advocacy of the client's cause can best be carried on in terms which, however forceful, do not transcend the bounds of propriety and good breeding. The use of intemperate and abusive words in briefs is frowned upon by the courts. Opposite counsel is, equally with the court, entitled to the same consideration. To impute to him bad faith and improper motives upon gratuitous grounds does not make the case of the one who makes the imputation any stronger, but only serves to cast reflection on his own worthiness to be a member of the legal profession.

APPEAL from a judgment of the Court of First Instance of Manila. Santiago, *J.*

The facts are stated in the opinion of the Court.

Moises B. Ramos, for defendants and appellants.

Juan T. Chuidian and *Refael G. Suntay,* for plaintiff and appellee.

MAKALINTAL, *J.:*

From 1950 to 1955 the plaintiff and the defendants, the latter doing business under the tradename of "George's Northern Supply," carried on continuing transactions whereby the latter bought from the former oxygen and acetylene gas contained in metal cylinders. These containers were not included in the sale but were considered as "on loan" to the defendants, free of charge for 30 days after delivery but on a rental basis thereafter until returned to the plaintiff, at the rate of ₱.10 per day for each cylinder. A considerable number of these cylinders were received by the defendants during the period aforesaid. Each delivery was covered by an "outward receipt," wherein the serial numbers of the cylinders delivered were indicated. The cylinders, still filled with gas, were retailed by the defendants to its customers and as soon as emptied of their contents were collected back to be returned to the plaintiff. Upon such return the plaintiff issued an "inward receipt," wherein the serial numbers of the cylinders thus returned were indicated.

On July 12, 1956 the plaintiff commenced this action, alleging in the complaint that during the period from

July 1952 to May 25, 1955 it sold and delivered to the defendants "various cylinders of oxygen gas, acetylene gas and other articles on credit," all valued at ₱7,629.09, and that the defendants had failed to pay the said amount in spite of repeated demands for payment. The plaintiff therefore prayed that the defendants be ordered to pay the same, with the stipulated interest of 12%, plus damages in the sum of ₱5,000.00 The defendants filed their answer alleging that they had no knowledge or information sufficient to form a belief as to the truth of the allegations in the complaint and hence specifically denied them. By way of counterclaim they averred that the suit was frivolous, imaginary and malicious and prayed for moral damages and attorney's fees.

At the trial it turned out that the plaintiff's claim consists solely of the value of the empty cylinders which the defendants failed to return, at the unit price of ₱100.00 for those used as oxygen gas containers and ₱60.00 for those used as containers of acetylene gas. The court *a quo* rendered judgment in favor of the plaintiff for its whole claim in the sum of ₱7,629.09, with interest at 12% from July, 1952 until full payment, plus 25% of the sum overdue by way of attorney's fees, and costs. The defendants have appealed from the judgment and assigned eight errors therein.

The main issue is quite simple. The cylinders alleged by the plaintiff to have been unreturned are enumerated, according to their serial numbers, the respective dates of delivery to the defendants and the corresponding numbers of the outward receipts covering them, in the list marked as Exhibit JJ. The oxygen gas cylinders included in this list number 56; the acetylene gas cylinders, 41. The defendants maintain, first, that 21 of the 56 oxygen gas cylinders and 10 of the 41 acetylene gas cylinders are not the subject of the complaint, since they were received by the said defendants prior to July 1952 and admitted by the plaintiff to have been returned; and secondly, that although the rest of the cylinders mentioned in the list were not actually returned the defendants did return more cylinders than it received from the plaintiff during the entire period of their continuing transactions.

The first point made by the defendants appears to us meritorious. The first 21 oxygen gas cylinders and the first 10 acetylene gas cylinders included in Exhibit JJ, covered by the invoices marked as Exhibits A to P, inclusive, were delivered to the defendants prior to July 1952. The last delivery thereof was on June 30 of that year. The complaint specifically refers to deliveries from

July 1952 to May 25, 1955. Under the terms of the outward receipt issued by the plaintiff and signed by the defendants for every delivery the cylinders should be returned within 30 days, failing which the plaintiff could collect a rental of ₱.10 per day for each cylinder unreturned. Yet the complaint makes no reference to deliveries prior to July 1952 in spite of the fact that by then the defendants would already be liable to pay rentals on unreturned cylinders received by them up to June 30, 1952. Nor is this all. At the trial (p. 40, t.s.n.) counsel for the plaintiff made the following manifestation:

"My purpose Your Honor in presenting Exhibit A to Exhibit P is to prove that the cylinders were not returned after the last transaction from July 1952 to May 1955. Previous to that, we have no cause of action against the defendants."

In the memorandum filed by the plaintiff in the trial court (on pages 29 and 31 of the record on appeal) the following statements appear:

"From 1950 up to July 1952, defendants returned to plaintiff the empty cylinders of oxygen and acetylene gases in exchange for refilled ones. However, sometime in 1952 up to 1955, defendants started to keep the empty cylinders of oxygen and acetyelene gases and refused to return them to plaintiff."

"As already stated, prior to July, 1952 defendants faithfully and religiously complied with their obligation in favor of plaintiff in returning the empty cylinders for the purpose of refilling the same. Prior to July, 1952, the plaintiff has no cause of action against the defendants because the defendants have not defaulted in their undertaking in favor of plaintiff."

The foregoing manifestations, made by the plaintiff both at the trial and in their memorandum in the lower court, are clear and unequivocal admissions that the defendants have not defaulted in their obligation as far as returning the cylinders delivered to them before July 1952 is concerned. But it is alleged by the plaintiff that the cylinders subject of the transactions during said period were redelivered to the defendants thereafter although no new outward receipts for them were issued, the procedure followed by the parties being that whenever the defendants returned empty cylinders to the plaintiff for purposes of refilling and then took them back after having been refilled, they were no longer receipted for, the previous receipts being considered sufficient, and that if new cylinders were delivered to the defendants in excess of those returned for refilling new outward receipts were made out only for the excess. This procedure, however, has been denied by the defendants, and we are inclined to give credence to their denial, first, because such procedure would likely result

in confusion in the record of the accounts between the parties; and secondly, because it would signify the commission of fraud against the government in connection with the payment of the corresponding taxes on the sales of oxygen and acetylene gas by the plaintiff, since under this theory the outward receipts would not faithfully reflect the volume of the sales on which the taxes were collectible. It is the settled rule that a finding which would suggest the commission of a fraudulent act must be based upon clear and convincing evidence.

We pass on to consider the cylinders delivered to the defendants from July 1952 onward and listed in Exhibit JJ. With respect to three of the acetylene cylinders included therein, namely, those with serial numbers 1443–K, 1431–K and 1357–K, the evidence shows that they were returned by the defendants on March 6, 1953, as indicated on the plaintiff's "Credit Note No. 107" (Exh. 89) and on the supporting inward receipt (Exh. 58), both issued on the same date. With respect to the other cylinders mentioned in Exhibit JJ, it is admitted that they were received but not returned by the defendants. Indeed they are included in the outward receipts presented by them as part of their evidence (Exhibits 2 to 41, inclusive), but not in the inward receipts issued by the plaintiff for the cylinders returned (Exhibits 43 to 89). This fact—that those cylinders were received but not returned—constitutes the basis of the plaintiff's cause of action as well as of the judgment of the trial court in its favor. If said fact were the true test of the defendants' liability we should agree with the judgment without hesitation. But extraneous circumstances crept in which put an altogether different light on the question involved. The trial court correctly pinpointed the trouble when it said in its decision: "The practice (that the very same cylinders delivered to the defendants, as identified by their serial numbers, were to be returned to the plaintiff), however, because confused when plaintiff began to gather their empty "Paco" which means Philippine Acetylene Company, from defendants' customers." The evidence reveals that the plaintiff, through its agent, dealt not only with the defendants, who were their dealers in the province of La Union, but did so directly with the defendants' customers in said province by selling oxygen and acetylene gas to them. In the process the plaintiff would take back cylinders previously received by said customers from the defendants, and the defendants would accept from them empty cylinders different from those actually delivered,

and then would surrender them in turn to the plaintiff. Thus one of those customers, Fructuoso Pajarit, testified:

"COURT:

"Q. Why do you know Mr. de Leon?

"A. He is the in charge of delivering refilled oxygen and acetylene cylinders in San Fernando, La Union."

"COURT:

Proceed."

"ATTY. RAMOS:

"Q. What does he do in the Flora Motor Service in La Union?

"A. He used to sell the refilled oxygen and acetylene gases in exchange with out empty oxygen and acetylene cylinders."

"Q. You said you exchange empty cylinders of oxygen and acetylene cylinders, from whom did you acquire such cylinders of oxygen and acetylene?

"A. We acquired them from the George's Northern Supply."

The situation above described accounts for the numerous discrepancies in serial numbers between all the cylinders received by the defendants from July 1952 to 1955 and all the cylinders returned by them during the same period. As shown in the outward receipts marked as Exhibits 2 to 41 the defendants received a total of 417 cylinders of oxygen gas and 144 cylinders of acetylene gas; and as shown in the inward receipts marked as Exhibits 43 to 89 they returned 450 of the former and 146 of the latter. After checking the serial numbers of those received against the serial numbers of those returned, we find that of the oxygen and acetylene gas cylinders received by the defendants 84 and 38 cylinders, respectively, are not included among those returned, while of those returned 112 and 42, respectively, had not been received from the plaintiff. If the practice were, as alleged by the plaintiff, that the very same cylinders received had to be returned, there would be no explanation at all for such discrepancies. Once these circumstances are considered, the theory advanced by the plaintiff for the determination of the defendants' liability ceases to be valid. The mere showing that there are cylinders admittedly received by the latter and still unreturned, as listed in Exhibit JJ, loses its material and decisive significance in the face of the fact that numerous cylinders not delivered to the defendants by the plaintiff were returned to it. The more reliable test is to determine how many the defendants received and how many they returned, regardless of the individual serial numbers. The defendants have produced in evidence the receipts, outward and inward, covering all the cylinders involved in their transactions with the plaintiff from July 1952 to 1955. The said evidence dis-

closes that they actually returned more than were delivered to them. There is therefore no reason to hold them liable.

In so far as the defendants' counterclaim for moral damages and attorney's fees is concerned, we find no justifiable ground to award the same, it not having been satisfactorily shown that this action was filed capriciously or in bad faith.

We find it necessary here to offer a strong word of admonition to defendants' counsel, Attorney Moises B. Ramos, who is himself one of the defendants. The language he has used in his brief and memoranda is in numerous instances intemperate, abusive and bordering on the contumacious. A lawyer is, first of all, an officer of the court and is its indispensable aid in the fair and impartial administration of justice. Proper deference to it must therefore always be maintained by him, and self-restraint must be exercised in the face of an adverse decision. Advocacy of the client's cause can best be carried on in terms which, however forceful, do not transcend the bounds of propriety and good breeding. Opposite counsel is, equally with the court, entitled to the same consideration. To impute to him bad faith and improper motives upon gratuitous grounds does not make the case of the one who makes the imputation any stronger, but only serves to cast reflection on his own worthiness to be a member of the legal profession.

WHEREFORE, the judgment appealed from is hereby reversed. The complaint and the defendants' counterclaim are dismissed, with costs against the plaintiff-appellee.

SO ORDERED.

De Leon and *Castro, JJ.*, concur.

Judgment reversed.